
TEXAS REGISTER

Volume 31 Number 23

June 9, 2006

Pages 4685-4806



Najwa Al-Mohamed

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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The ***Texas Register*** is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the ***Texas Register***, 136 Carlin Rd., Conklin, N.Y. 13748-1531.



a section of the
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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER E. MISCELLANEOUS

DIVISION 1. DELINQUENT LIST

16 TAC §45.121

The Texas Alcoholic Beverage Commission proposes amendments to §45.121, relating to regulation of delinquent payments for liquor by retailers to suppliers and compliance with §102.32 of the Alcoholic Beverage Code.

Lou Bright, General Counsel, has determined that for the first five years the amendments are in effect, there will be no additional or unique costs to units of government, persons or small businesses as a result of the amendments.

Mr. Bright has determined that the public will benefit from these amendments in that they will serve to harmonize regulatory requirements and standard business practices, thereby lessening the burden of regulation on industry members required to comply with the rule.

Comments may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

This amendment is proposed under the authority of Alcoholic Beverage Code §5.31, which gives the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Section 102.32 of the Alcoholic Beverage Code is affected by this amendment.

§45.121. Delinquent List.

(a) Any package store permittee, wine only ~~[wine-only]~~ package store permittee, private club permittee, mixed beverage permittee, or other retailer who has not fully paid for alcoholic beverages purchased from any wholesaler, class ~~[Class]~~ B wholesaler, ~~[Class A]~~ winery, wine bottler, or local distributor in accordance with §102.32 of the Alcoholic Beverage Code shall be deemed delinquent.

(b) Each delivery of alcoholic beverages by a wholesaler, class ~~[Class]~~ B wholesaler, ~~[Class A]~~ winery, wine bottler, or local distributor to a package store permittee, wine only ~~[wine-only]~~ package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer shall be accompanied by an invoice of sale bearing the name of the retailer together with a full description of the alcoholic beverages delivered, the price and terms of sale, and the place and date of actual delivery. One copy

of such invoice shall be signed by the retailer or his agent, showing receipt of the merchandise, and shall be retained by the seller. The other copy shall be retained by the retailer.

(c) It shall be the duty of each wholesaler, class ~~[Class]~~ B wholesaler, ~~[Class A]~~ winery, wine bottler, or local distributor to report all delinquencies to the administrator in writing within two business days after such delinquencies occur. Such reports set forth the name, address, and permit number of the package store permittee, wine only ~~[wine-only]~~ package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer in default, the date of sale and delivery of such alcoholic beverages on account of which report is made, the amount in dollars and cents of such delinquency, and the name, address, and permit number of the permittee reporting. In a like manner, the wholesaler, class ~~[Class]~~ B wholesaler, ~~[Class A]~~ winery, wine bottler, or local distributor shall report when payment in full has been made of any account previously reported delinquent. ~~[No such delinquent account shall be paid in any manner other than by cash, U.S. postal money order, postal note, express money order, cashier's check, certified check, or bank exchange.]~~

(d) In the event any package store permittee, wine only ~~[wine-only]~~ package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer shall pay on his account with any wholesaler, class ~~[Class]~~ B wholesaler, ~~[Class A]~~ winery, wine bottler, or local distributor by means of a draft, check or any other instrument, which draft, check, or other instrument is dishonored by the drawee, then it shall be the duty of such wholesaler, class ~~[Class]~~ B wholesaler, ~~[Class A]~~ winery, wine bottler, or local distributor to immediately report such fact to the administrator by affidavit provided such failure to honor such draft, check, or other instrument causes a delinquency. In such event, the giver of such dishonored draft[, check, or other instrument shall be deemed guilty of attempting to evade the delinquent list to be published by the commission and such act shall constitute a violation of this rule, and any permit held by the giver of such dishonored draft, check, or other instrument may be cancelled or suspended.

(e) Following each delinquency reporting date, the commission shall notify wholesalers, class ~~[Class]~~ B wholesalers, ~~[Class A]~~ wineries, wine bottlers, and local distributors of all delinquencies occurring by publishing a delinquent list which specifies an effective date for the list, and after said effective date ~~[thereafter]~~ no sales or deliveries of alcoholic beverages shall be made to any package store permittee, wine only ~~[wine-only]~~ package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer whose name appears upon said delinquent list until such time as notice of removal from such list has been given in writing by the commission. After the effective date of the delinquent list, any retailer whose name appears on such list must pay the delinquency by cash, U.S. postal money order, postal note, express money order, cashier's check, certified check, or bank exchange.

(f) After the effective day of the delinquent list on which their name appears, [After becoming delinquent,] package store permittees, wine only [wine-only] package store permittees, private club permittees, private club exemption certificate permittees, mixed beverage permittees, and other retailers shall not purchase or accept delivery of any alcoholic beverages from any wholesaler, class [Class] B wholesaler, [Class A] winery, wine bottler, or local distributor until the commission has given notice of removal from such list.

(g) If any default or failure to comply with the requirements of §102.32 of the Alcoholic Beverage Code is the result of a dispute involving the quality or quantity of the alcoholic beverages, or any other factor involved in the sale of or purchase of same, the seller or purchaser may file a statement in writing with the administrator on or before the delinquency reporting date, setting forth in detail any reason why a delinquency should not be deemed to exist. The administrator shall thereupon determine whether the retailer shall be placed upon the delinquent list.

(h) If a due date under §102.32(c) falls on a Saturday, Sunday or a state or federal holiday, the due date shall be the next regular business day. Payment sent via U.S. mail or private delivery service shall be deemed made on the date the payment is mailed or sent, as evidenced by postmark, receipt or other similar proof of mailing date. Payment delivered directly to an agent or employee of a vendor who is authorized by the vendor to accept payment shall be deemed made on the date of actual delivery to such authorized employee or agent of vendor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2006.

TRD-200602874

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 206-3204



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §157.125, new §157.125 concerning requirements for trauma facility designation; and an amendment to §157.128 concerning denial, suspension, and revocation of trauma facility designation.

BACKGROUND AND PURPOSE

The amendment, repeal and new section are necessary to comply with Government Code, §2001.039, that requires each state agency to review and consider for re-adoption each rule adopted

by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Sections 157.125 and 157.128 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

Additionally, the amendment, repeal and new section are necessary to update, remove obsolete language, reorganize, and clarify the requirements for meeting trauma designation standards. The amendment was endorsed by the stakeholder group, the Governor's Emergency Medical Services (EMS) and Trauma Advisory Council's Trauma Systems Committee, and department staff after over two years of discussion and stakeholder input. Proposed changes to the rules are expected to positively impact the care provided to patients in designated trauma centers throughout the state. The department also anticipates a positive impact on hospitals and the organizations that represent them. The proposed rules are expected to have a positive impact on the department as they propose to trauma designate hospitals, review survey reports and enforce trauma designation rules.

SECTION-BY-SECTION SUMMARY

The repeal and new §157.125 provide clarity due to the number of proposed changes. The new proposed rule better defines the various levels of trauma designation to include the process for review and designation of healthcare facilities based on the level of designation deemed appropriate by the department; the definition of a healthcare facility as it relates to trauma designation; the three phases of the trauma designation process; and a timely and sufficient application.

The new proposed rule outlines the process for requesting exceptions to criteria and for reporting deficiencies. It adds language to address air medical access to designated landing sites at the healthcare facility and the process used to implement any changes to designated landing sites.

The new proposed rule also updates the composition of the trauma designation site survey team as well as designation requirements to include such things as pediatric-specific education and the use of the American College of Surgeons or a comparable organization to conduct the trauma designation survey.

The proposed new rule aligns existing rule language with the national standards of care for trauma facilities set forth by the American College of Surgeons and applies state standards consistently across all levels of trauma designation by requiring hospitals that have achieved higher levels of trauma designation to also meet all required standards for hospitals with lower designation levels, to include such things as nursing education requirements that are not addressed by the American College of Surgeons.

The proposed new rule establishes consistent performance standards for all hospitals seeking Level III trauma facility designation, to include the requirement for orthopedic surgeons, full-time trauma program managers/trauma nurse coordinators, and outreach programs.

Amendments to §157.128 provide clarification to the rule, update reference to a statute, and update the name of the department's program to the "Office of EMS/Trauma Systems Coordination" which provides rule oversight.

FISCAL NOTE

Kathryn C. Perkins, Section Director, Health Care Quality Section, has determined that for each year of the first five years that the sections are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the sections as proposed unless a local government operates a healthcare facility and voluntarily chooses to seek trauma designation. In that case, local governments will be required to comply with the rules. Once the rules are adopted, local governments that currently operate or seeks Level III trauma designation may incur costs to maintain 24/7 orthopedic surgical coverage and to provide one full-time equivalent position for the trauma nurse coordinator/trauma program manager position. The current rule only applies these criteria to "lead" Level III trauma facilities, which effects approximately less than half of the 40 healthcare facilities designated as a Level III. The new requirements will apply to all Level III trauma facilities, some of which are already meeting the criteria. The cost associated with these proposed requirements cannot be determined since the local market in which the Local Government resides will determine the fiscal impact on each healthcare facility

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there is no anticipated economic costs to persons who are required to comply with the sections as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with these sections unless they operate a healthcare facility and voluntarily choose to seek trauma designation. In that case, the small businesses and/or micro-businesses will be required to comply with the rules. Once the rules are adopted, small businesses and/or micro-businesses that currently operate or seeks Level III trauma designation may incur costs to maintain 24/7 orthopedic surgical coverage and to provide one full-time equivalent position for the trauma nurse coordinator/trauma program manager position. The current rule only applies these criteria to "lead" Level III trauma facilities, which affects approximately less than half of the 40 healthcare facilities designated as a Level III. The new requirements will apply to all Level III trauma facilities, some of which are already meeting the criteria. The cost associated with these proposed requirements cannot be determined since the local market in which the small businesses and/or micro-businesses resides will determine the fiscal impact on each healthcare facility. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is a strengthening of the Texas EMS/Trauma System because the proposed rules are expected to positively impact the care provided to patients in designated trauma centers across the state. The department also anticipates a positive impact on hospitals and the organizations that represent them.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy,

a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment, repeal and new rule do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Stephen C. Janda, Manager, Office of EMS/Trauma Systems Coordination, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700, or by email to steve.janda@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §157.125

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeal is authorized by the Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the department with the authority to adopt rules to implement the Emergency Medical Services Act; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation, provision, and administration of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeal affects the Health and Safety Code, Chapter 773.

§157.125. Requirements for Trauma Facility Designation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2006.

TRD-200602914

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 458-7111 x6972

◆ ◆ ◆

25 TAC §157.125, §157.128

STATUTORY AUTHORITY

The proposed new rule and amendment are authorized by the Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the department with the authority to adopt rules to implement the Emergency Medical Services Act; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation, provision, and administration of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rule and amendment affect the Health and Safety Code, Chapter 773.

§157.125. Requirements for Trauma Facility Designation.

(a) The Office of Emergency Medical Services (EMS)/Trauma Systems Coordination (office) shall recommend to the Commissioner of the Department of State Health Services (commissioner) the designation of an applicant/healthcare facility (facility) as a trauma facility at the level(s) for each location of a facility the office deems appropriate.

(1) Comprehensive (Level I) trauma facility designation--The facility, including a free-standing children's facility, meets the current American College of Surgeons (ACS) essential criteria for a verified Level I trauma center; meets the "Advanced Trauma Facility Criteria" in subsection (x) of this section; actively participates on the appropriate Regional Advisory Council (RAC); has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the Texas EMS/Trauma Registry.

(2) Major (Level II) trauma facility designation--The facility, including a free-standing children's facility, meets the current ACS essential criteria for a verified Level II trauma center; meets the "Advanced Trauma Facility Criteria" in subsection (x) of this section; actively participates on the appropriate RAC; has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the Texas EMS/Trauma Registry.

(3) Advanced (Level III) trauma facility designation--The facility meets the "Advanced Trauma Facility Criteria" in subsection (x) of this section; actively participates on the appropriate RAC; has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the Texas EMS/Trauma Registry. A free-standing children's facility, in addition to meeting the requirements listed in this section, must meet the current ACS essential criteria for a verified Level III trauma center.

(4) Basic (Level IV) trauma facility designation--The facility meets the "Basic Trauma Facility Criteria" in subsection (y) of this section; actively participates on the appropriate RAC; has appropriate services for dealing with stressful events available to emergency/trauma care providers; and submits data to the Texas EMS/Trauma Registry.

(b) A healthcare facility is defined under these rules as a single location where inpatients receive hospital services or each location if there are multiple buildings where inpatients receive hospital services and are covered under a single hospital license.

(1) Each location shall be considered separately for designation and the Department of State Health Services (department) will determine the designation level for that location, based on, but not limited to, the location's own resources and levels of care capabilities; Trauma Service Area (TSA) capabilities; and the essential criteria and requirements outlined in subsection (a)(1) - (4) of this section. The fi-

nal determination of the level(s) of designation may not be the level(s) requested by the facility.

(2) A facility with multiple locations that is applying for designation at one location shall be required to apply for designation at each of its other locations where there are buildings where inpatients receive hospital services and such buildings are collectively covered under a single hospital's license.

(c) The designation process shall consist of three phases.

(1) First phase--The application phase begins with submitting to the office a timely and sufficient application for designation as a trauma facility and ends when the survey report is received by the office.

(2) Second phase--The review phase begins with the office's review of the survey report and ends with its recommendation to the commissioner whether or not to designate the facility and at what level(s). This phase also includes an appeal procedure governed by the department's rules for a contested case hearing and by Government Code, Chapter 2001.

(3) Third phase--The final phase begins with the commissioner reviewing the recommendation and ends with his/her final decision.

(d) For a facility seeking initial designation, a timely and sufficient application shall include:

(1) the department's current "Complete Application" form for the appropriate level, with all fields correctly and legibly filled-in and all requested documents attached, hand-delivered or sent by postal services to the office;

(2) full payment of the designation fee enclosed with the submitted "Complete Application" form;

(3) any subsequent documents submitted by the date requested by the office;

(4) a trauma designation survey completed within one year of the date of the receipt of the application by the office; and

(5) a complete survey report, including patient care reviews, that is within 180 days of the date of the survey and is hand-delivered or sent by postal services to the office.

(e) If a hospital seeking initial designation fails to meet the requirements in subsection (d)(1) - (5) of this section, the application shall be denied.

(f) For a facility seeking re-designation, a timely and sufficient application shall include:

(1) the department's current "Complete Application" form for the appropriate level, with all fields correctly and legibly filled-in and all requested documents attached, hand-delivered or sent by postal services to the office one year or greater from the designation expiration date;

(2) full payment of the designation fee enclosed with the submitted "Complete Application" form;

(3) any subsequent documents submitted by the date requested by the office; and

(4) a complete survey report, including patient care reviews, that is within 180 days of the date of the survey and is hand-delivered or sent by postal services to the office no less than 60 days prior to the designation expiration date.

(g) If a healthcare facility seeking re-designation fails to meet the requirements outlined in subsection (f)(1) - (4) of this section, the original designation will expire on its expiration date.

(h) The office's analysis of the submitted "Complete Application" form may result in recommendations for corrective action when deficiencies are noted and shall also include a review of:

(1) the evidence of current participation in RAC/regional system planning; and

(2) the completeness and appropriateness of the application materials submitted, including the submission of a non-refundable application fee as follows:

(A) for Level I and Level II trauma facility applicants, the fee will be no more than \$10 per licensed bed with an upper limit of \$5,000 and a lower limit of \$4,000;

(B) for Level III trauma facility applicants, the fee will be no more than \$10 per licensed bed with an upper limit of \$2,500 and a lower limit of \$1,500; and

(C) for Level IV trauma facility applicants, the fee will be no more than \$10 per licensed bed with an upper limit of \$1000 and a lower limit of \$500.

(i) When a "Complete Application" form for initial designation or re-designation from a facility is received, the office will determine the level it deems appropriate for pursuit of designation or re-designation for each of the facility's locations based on, but not limited to: the facility's resources and levels of care capabilities at each location, TSA resources, and the essential criteria for Levels I, II, III, and IV trauma facilities. In general, physician services capabilities described in the application must be in place 24 hours a day/7 days a week. In determining whether a physician services capability is present, the department may use the concept of substantial compliance that is defined as having said physician services capability at least 90% of the time.

(1) If a facility disagrees with the level(s) determined by the office to be appropriate for pursuit of designation or re-designation, it may make an appeal in writing within 60 days to the director of the office. The written appeal must include a signed letter from the facility's governing board with an explanation as to why designation at the level determined by the office would not be in the best interest of the citizens of the affected TSA or the citizens of the State of Texas.

(2) The written appeal may include a signed letter (s) from the executive board of its RAC or individual healthcare facilities and/or EMS providers within the affected TSA with an explanation as to why designation at the level determined by the office would not be in the best interest of the citizens of the affected TSA or the citizens of the State of Texas.

(3) If the office upholds its original determination, the director of the office will give written notice of such to the facility within 30 days of its receipt of the applicant's complete written appeal.

(4) The facility may, within 30 days of the office's sending written notification of its denial, submit a written request for further review. Such written appeal shall then go to the Assistant Commissioner, Division for Regulatory Services (assistant commissioner).

(j) When the analysis of the "Complete Application" form results in acknowledgement by the office that the facility is seeking an appropriate level of designation or re-designation, the facility may then contract for the survey, as follows.

(1) Level I and II facilities and all free-standing children's facilities shall request a survey through the ACS trauma verification program.

(2) Level III facilities shall request a survey through the ACS trauma verification program or through a comparable organization approved by the department.

(3) Level IV facilities shall request a survey through the ACS trauma verification program, through a comparable organization approved by the department, or by a department-credentialed surveyor(s) active in the management of trauma patients.

(4) The facility shall notify the office of the date of the planned survey and the composition of the survey team.

(5) The facility shall be responsible for any expenses associated with the survey.

(6) The office, at its discretion, may appoint an observer to accompany the survey team. In this event, the cost for the observer shall be borne by the office.

(k) The survey team composition shall be as follows.

(1) Level I or Level II facilities shall be surveyed by a team that is multi-disciplinary and includes at a minimum: 2 general surgeons, an emergency physician, and a trauma nurse all active in the management of trauma patients.

(2) Free-standing children's facilities of all levels shall be surveyed by a team consistent with current ACS policy and includes at a minimum: a pediatric surgeon; a general surgeon; a pediatric emergency physician; and a pediatric trauma nurse coordinator or a trauma nurse coordinator with pediatric experience.

(3) Level III facilities shall be surveyed by a team that is multi-disciplinary and includes at a minimum: a trauma surgeon and a trauma nurse (ACS or department-credentialed), both active in the management of trauma patients.

(4) Level IV facilities shall be surveyed by a department-credentialed representative, registered nurse or licensed physician. A second surveyor may be requested by the facility or by the department.

(5) Department-credentialed surveyors must meet the following criteria:

(A) have at least 3 years experience in the care of trauma patients;

(B) be currently employed in the coordination of care for trauma patients;

(C) have direct experience in the preparation for and successful completion of trauma facility verification/designation;

(D) have successfully completed a department-approved trauma facility site surveyor course and be successfully re-credentialed every 4 years; and

(E) have current credentials as follows:

(i) for nurses: Trauma Nurses Core Course (TNCC) or Advanced Trauma Course for Nurses (ATCN); and Pediatric Advanced Life Support (PALS) or Emergency Nurses Pediatric Course (ENPC);

(ii) for physicians: Advanced Trauma Life Support (ATLS); and

(iii) have successfully completed a site survey internship.

(6) All members of the survey team, except department staff, shall come from a TSA outside the facility's location and at least 100 miles from the facility. There shall be no business or patient care

relationship or any potential conflict of interest between the surveyor or the surveyor's place of employment and the facility being surveyed.

(l) The survey team shall evaluate the facility's compliance with the designation criteria, by:

(1) reviewing medical records; staff rosters and schedules; process improvement committee meeting minutes; and other documents relevant to trauma care;

(2) reviewing equipment and the physical plant;

(3) conducting interviews with facility personnel;

(4) evaluating compliance with participation in the Texas EMS/Trauma Registry; and

(5) evaluating appropriate use of telemedicine capabilities where applicable.

(m) The site survey report in its entirety shall be part of a facility's performance improvement program and subject to confidentiality as articulated in the Health and Safety Code, §773.095.

(n) The surveyor(s) shall provide the facility with a written, signed survey report regarding their evaluation of the facility's compliance with trauma facility criteria. This survey report shall be forwarded to the facility within 30 calendar days of the completion date of the survey. The facility is responsible for forwarding a copy of this report to the office if it intends to continue the designation process.

(o) The office shall review the findings of the survey report for compliance with trauma facility criteria.

(1) A recommendation for designation shall be made to the commissioner based on compliance with the criteria.

(2) If a facility does not meet the criteria for the level of designation deemed appropriate by the office, the office shall notify the facility of the requirements it must meet to achieve the appropriate level of designation.

(3) If a facility does not comply with criteria, the office shall notify the facility of deficiencies and recommend corrective action.

(A) The facility shall submit to the office a report that outlines the corrective action(s) taken. The office may require a second survey to ensure compliance with the criteria. If the office substantiates action that brings the facility into compliance with the criteria, the Office shall recommend designation to the commissioner.

(B) If a facility disagrees with the office's decision regarding its designation application or status, it may request a secondary review by a designation review committee. Membership on a designation review committee will:

(i) be voluntary;

(ii) be appointed by the office director;

(iii) be representative of trauma care providers and appropriate levels of designated trauma facilities; and

(iv) include representation from the department and the Trauma Systems Committee of the Governor's EMS and Trauma Advisory Council (GETAC).

(C) If a designation review committee disagrees with the office's recommendation for corrective action, the records shall be referred to the assistant commissioner for recommendation to the commissioner.

(D) If a facility disagrees with the office's recommendation at the end of the secondary review, the facility has a right to a hearing, in accordance with the department's rules for contested cases, and Government Code, Chapter 2001.

(p) The facility shall have the right to withdraw its application at any time prior to being recommended for trauma facility designation by the office.

(q) If the commissioner concurs with the recommendation to designate, the facility shall receive a letter and a certificate of designation valid for 3 years. Additional actions, such as a site review or submission of information/reports to maintain designation, may be required by the department.

(r) It shall be necessary to repeat the designation process as described in this section prior to expiration of a facility's designation or the designation expires.

(s) A designated trauma facility shall:

(1) comply with the provisions within these sections; all current state and system standards as described in this chapter; and all policies, protocols, and procedures as set forth in the system plan;

(2) continue its commitment to provide the resources, personnel, equipment, and response as required by its designation level;

(3) participate in the Texas EMS/Trauma Registry. Data submission requirements for designation purposes are as follows.

(A) Initial designation--Six months of data prior to the initial designation survey must be uploaded. Subsequent to initial designation, data should be uploaded to the Texas EMS/Trauma Registry on at least a quarterly basis (with monthly submissions recommended) as indicated in §103.19 of this title (relating to Electronic Reporting).

(B) Re-designation--The facility's trauma registry should be current with at least quarterly uploads of data to the Texas EMS/Trauma Registry (monthly submissions recommended) as indicated in §103.19 of this title;

(4) notify the office, its RAC plus other affected RACs of all changes that affect air medical access to designated landing sites.

(A) Non-emergent changes shall be implemented no earlier than 120 days after a written notification process.

(B) Emergency changes related to safety may be implemented immediately along with immediate notification to department, the RAC, and appropriate Air Medical Providers.

(C) Conflicts relating to helipad air medical access changes shall be negotiated between the facility and the EMS provider.

(D) Any unresolved issues shall be handled utilizing the alternative dispute resolution (ADR) process of the RAC in which the helipad is located;

(5) within 5 days, notify the office; its RAC plus other affected RACs; and the healthcare facilities to which it customarily transfers-out trauma patients or from which it customarily receives trauma transfers-in if temporarily unable to comply with a designation criterion. If the healthcare facility intends to comply with the criterion and maintain current designation status, it must also submit to the office a plan for corrective action and a request for a temporary exception to criteria within 5 days.

(A) If the requested essential criterion exception is not critical to the operations of the healthcare facility's trauma program and the office determines that the facility has intent to comply, a 30-day

to 90-day exception period from onset date of the deficiency may be granted for the facility to achieve compliancy.

(B) If the requested essential criterion exception is critical to the operations of the healthcare facility's trauma program and the office determines that the facility has intent to comply, no greater than a 30-day exception period from onset date of the deficiency may be granted for the facility to achieve compliancy. Essential criteria that are critical include such things as:

- (i) neurological surgery capabilities (Level I, II);
- (ii) orthopedic surgery capabilities (Level I, II, III);
- (iii) general/trauma surgery capabilities (Level I, II, III);
- (iv) anesthesiology (Levels I, II, III);
- (v) emergency physicians (all levels);
- (vi) trauma medical director (all levels);
- (vii) trauma nurse coordinator/program manager (all levels); and
- (viii) trauma registry (all levels).

(C) If the healthcare facility has not come into compliance at the end of the exception period, the office may at its discretion elect 1 of the following:

- (i) allow the facility to request designation at the level appropriate to its revised capabilities;
- (ii) propose to re-designate the facility at the level appropriate to its revised capabilities;
- (iii) propose to suspend the facility's designation status. If the facility is amenable to this action, the office will develop a plan for corrective action for the facility and a specific timeline for compliance by the facility; or
- (iv) propose to extend the facility's temporary exception to criteria for an additional period not to exceed 90 days. The department will develop a plan for corrective action for the facility and a specific timeline for compliance by the facility.

(I) Suspensions of a facility's designation status and exceptions to criteria for facilities will be documented on the office website.

(II) If the facility disagrees with a proposal by the office, or is unable or unwilling to meet the office-imposed timelines for completion of specific actions plans, it may request a secondary review by a designation review committee as defined in subsection (o)(3)(B) of this section.

(III) The office may at its discretion choose to activate a designation review committee at any time to solicit technical advice regarding criteria deficiencies.

(IV) If the designation review committee disagrees with the office's recommendation for corrective actions, the case shall be referred to the assistant commissioner for recommendation to the commissioner.

(V) If a facility disagrees with the office's recommendation at the end of the secondary review process, the facility has a right to a hearing, in accordance with the department's rules for contested cases and Government Code, Chapter 2001.

(VI) Designated trauma facilities seeking exceptions to essential criteria shall have the right to withdraw the request at any time prior to resolution of the final appeal process;

(6) notify the office; its RAC plus other affected RACs; and the healthcare facilities to which it customarily transfers-out trauma patients or from which it customarily receives trauma transfers-in, if it no longer provides trauma services commensurate with its designation level.

(A) If the facility chooses to apply for a lower level of trauma designation, it may do so at any time; however, it shall be necessary to repeat the designation process. There shall be a paper review by the office to determine if and when a full survey shall be required.

(B) If the facility chooses to relinquish its trauma designation, it shall provide at least 30 days notice to the RAC and the office; and

(7) within 30 days, notify the office; its RAC plus other affected RACs; and the healthcare facilities to which it customarily transfers-out trauma patients or from which it customarily receives trauma transfers-in, of the change(s) if it adds capabilities beyond those that define its existing trauma designation level.

(A) It shall be necessary to repeat the trauma designation process.

(B) There shall then be a paper review by the office to determine if and when a full survey shall be required.

(t) Any facility seeking trauma designation shall have measures in place that define the trauma patient population evaluated at the facility and/or at each of its locations, and the ability to track trauma patients throughout the course of their care within the facility and/or at each of its locations in order to maximize funding opportunities for uncompensated care.

(u) A healthcare facility may not use the terms "trauma facility", "trauma hospital", "trauma center", or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the healthcare facility is currently designated as a trauma facility according to the process described in this section.

(v) The office shall have the right to review, inspect, evaluate, and audit all trauma patient records, trauma performance improvement committee minutes, and other documents relevant to trauma care in any designated trauma facility or applicant/healthcare facility at any time to verify compliance with the statute and this rule, including the designation criteria. The office shall maintain confidentiality of such records to the extent authorized by the Texas Public Information Act, Government Code, Chapter 552, and consistent with current laws and regulations related to the Health Insurance Portability and Accountability Act of 1996. Such inspections shall be scheduled by the office when deemed appropriate. The office shall provide a copy of the survey report, for surveys conducted by or contracted for the department, and the results to the healthcare facility.

(w) The office may grant an exception to this section if it finds that compliance with this section would not be in the best interests of the persons served in the affected local system.

(x) Advanced (Level III) Trauma Facility Criteria.
Figure: 25 TAC §157.125(x)

(1) Advanced (Level III) Trauma Facility Criteria Standards.
Figure: 25 TAC §157.125(x)(1)

(2) Advanced (Level III) Trauma Facility Criteria Audit Filters.
Figure: 25 TAC §157.125(x)(2)

(y) Basic (Level IV) Trauma Facility Criteria.
Figure: 25 TAC §157.125(y)

(1) Basic (Level IV) Trauma Facility Criteria Standards.
Figure: 25 TAC §157.125(y)(1)

(2) Basic (Level IV) Trauma Facility Criteria Audit Filters.
Figure: 25 TAC §157.125(y)(2)

§157.128. *Denial, Suspension, and Revocation of Trauma Facility Designation.*

(a) An applicant/healthcare facility's [A hospital's] application for designation may be denied or a healthcare [trauma] facility's trauma [(facility)] designation may be suspended or revoked for, but not limited to, the following reasons:

(1) - (3) (No change.)

(4) failure [refusal] to submit data to the Texas EMS/Trauma Registry [state trauma registry];

(5) failure to maintain required licenses, designations, and accreditations or when disciplinary action has been taken against the healthcare facility [hospital] by a licensing agency;

(6) - (11) (No change.)

(b) Occasional failure of a healthcare [hospital or] facility to meet designation criteria shall not be grounds for denial, suspension or revocation by the Office of EMS/Trauma Systems Coordination (office) [Bureau of Emergency Management (bureau)], if the circumstances under which the failure occurred:

(1) do not reflect an overall deterioration in quality of [and commitment to] trauma care; and

(2) are corrected within a reasonable timeframe by the healthcare [hospital or] facility.

(c) If the office [bureau] proposes to deny, suspend, or revoke a designation, the office [bureau] shall notify the healthcare [hospital or] facility at the address shown in the current records of the department. The notice shall state the alleged facts that warrant the proposed action and state that the healthcare [hospital or] facility has an opportunity to request a hearing in accordance with [the Administrative Procedure Act,] Government Code, Chapter 2001.

(1) A request for a hearing shall be in writing and submitted to the Office of EMS/Trauma Systems Coordination and postmarked within 15 days of the date the notice was sent.

~~[(1) The hospital or facility shall request a hearing in writing and submit it to the bureau chief within 15 days after the date of the denial, suspension, or revocation notice.]~~

(2) If the healthcare facility fails to timely submit a written request for a hearing, it will be deemed to have waived the opportunity for a hearing and the proposed action will be ordered.

~~[(2) If the hospital or facility does not request a hearing in writing, after being sent the notice of opportunity for hearing, it is deemed to have waived the opportunity for a hearing and the denial, suspension, or revocation decision shall stand.]~~

(d) Six months after the denial of an applicant/healthcare facility's [a hospital's application for] designation, the applicant/healthcare facility [hospital] may reapply for trauma facility designation as described in §157.125 of this title.

~~[(e) When a designation has been suspended, the suspension shall be in effect a minimum of 10 days. Upon completion of the assigned suspension time, designation shall resume.]~~

(e) ~~[(f)]~~ One year after the revocation of a healthcare facility's [facility] designation, the healthcare facility [hospital] may reapply for designation as described in §157.125 of this title. The office [bureau] may deny designation if the office [bureau] determines that the reason for the revocation continues to exist.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2006.

TRD-200602913

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 458-7111 x6972



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §5.4607

The Department of Insurance proposes new §5.4607 concerning procedures for the appointment by the Commissioner, based on demonstrated need, of temporary qualified inspectors to conduct windstorm inspections in designated catastrophe areas pursuant to Insurance Code Article 21.49 §6A. Under the proposal, after notice and a public hearing pursuant to Article 21.49 §5A, the Commissioner may determine that qualified inspectors are not reasonably available in the first tier coastal counties specified in Article 21.49 and/or in designated catastrophe areas as defined by Article 21.49 §3(h). If the Commissioner makes such a determination, the Commissioner may appoint temporary qualified inspectors as needed and for a limited period. The temporary appointees will be authorized to perform inspections of structures for purposes of determining insurability for windstorm and hail coverage through the Texas Windstorm Insurance Association (TWIA) as provided in Article 21.49. As a result of Hurricane Rita in 2005, the Department found that in the aftermath of a hurricane or other catastrophe, residents and business owners in the affected catastrophe areas can face delays in the building or repair of structures because of the overwhelming demand for windstorm inspections and the lack of qualified inspectors to meet this demand. The delay in rebuilding and repair of structures creates a negative influence in the economic stability of the affected area. To assist in meeting this demand for inspectors in the past, the Department has used various measures to

increase the number of windstorm inspectors. Following Hurricane Rita, the Department temporarily assigned its inspectors from other areas of the coast to the affected areas, provided by rule for the temporary appointment of inspectors in the most needed areas, and worked with the TWIA, which provided additional inspection assistance through independent contract inspectors. While these efforts have been effective, the delay in implementing measures to meet the demand for inspections may have contributed to an erosion of economic stability. There is a need for the Department to act earlier and more quickly following any future catastrophe to address the overwhelming demand for windstorm inspections and the lack of qualified inspectors to meet this demand and to lessen the negative economic impact. This expedited action by the Department is necessary to ensure that residents and business owners in the affected catastrophe areas have access to enough qualified windstorm inspectors to prevent any unnecessary delays in the inspection process when re-building or repairing their structures. Therefore, the Department is proposing procedures, qualifications and requirements for the appointment of temporary qualified windstorm inspectors on an as-needed basis. This proposal will enable the Commissioner to make appointments without having to adopt separate rules for each designated catastrophe area that requires additional inspectors following a catastrophe. Under the proposal, the Commissioner may make such appointments if the Commissioner, following notice and a public hearing, determines that the appointment of additional inspectors is necessary to alleviate or prevent long delays for inspections of windstorm damaged structures and that qualified inspectors are not reasonably available. The Department in this proposal is seeking to prevent potential adverse impact to residents and business owners who are trying to build, rebuild, add to, or repair their properties to meet the windstorm building code requirements.

Proposed §5.4607(a) specifies the purposes of the section for the appointment of temporary qualified inspectors for a limited period on an as-needed basis and the conditions under which such appointments can be made. Proposed subsection (b) provides that temporary inspector appointments may be made only upon a determination by the Commissioner, after notice and a hearing, and further provides that an order by the Commissioner shall specify the reasons for the temporary appointments, the designated catastrophe areas in which the temporary inspector appointments are authorized, the types of inspections the temporary inspectors are authorized to perform, the period of time for which the appointments are effective, and any other requirements necessary to properly ensure the availability of qualified inspectors as needed in the designated catastrophe areas. Proposed subsection (c) specifies the qualifications, including necessary experience and training, of persons eligible to apply for a temporary appointment. It also specifies the necessary forms, affidavits and other documents needed for application. Proposed subsection (d) defines terms used throughout the section. Proposed subsection (e) outlines the application process for an appointment. Proposed subsection (f) specifies the training an appointee must undergo. Proposed subsection (g) specifies prohibited financial interests for applicants and temporary appointees. Proposed subsection (h) requires that temporary appointees comply and utilize certain specified windstorm inspection forms. Proposed subsection (i) provides that temporary appointees will be subject to the provisions of the Department's current §5.4604 relating to the appointment of engineers as qualified inspectors, including oversight by the Department. Proposed subsection (j) prohibits temporary appointees from delegating any duties that are part of the authorization of

their temporary appointment. Proposed subsection (k) provides that the issuance of a temporary appointment to a qualified inspector only authorizes the appointee to inspect structures for the purposes of determining whether windstorm and hail insurance may be provided by the Association and provides that no other types of inspections by temporary appointees will be valid for purposes of the Insurance Code Article 21.49. It further provides that a temporary appointment issued under this section shall be valid only for the areas and period of time specified by the Commissioner in the order of temporary appointment; at the end of such period or upon action by the Department, the appointment will expire. Proposed subsection (l) provides that temporary appointees will be subject to the provisions of the Department's current rule §5.4604 relating to the appointment of engineers as qualified inspectors, including oversight by the Department, and will also be subject to the emergency cease and desist provisions of the Insurance Code Chapter 83. This is necessary to ensure that improper inspections are halted as quickly as possible to prevent and deter approval of faulty or inadequate building, re-building, adding to, or repairing of structures, which could result in certification of structures that do not meet windstorm building code requirements and also to prevent additional harm to the property of residents and business owners. Proposed subsection (m) contains a severability clause which provides for the continuation of non-affected provisions of the rules if any provisions are declared invalid.

Alexis Dick, Deputy Commissioner, Inspections Division, has determined that, for each year of the first five years the proposed new section is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the section. Ms. Dick has also determined that there will be no measurable effect on local employment or the local economy.

Ms. Dick has further determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of administering and enforcing the section will be to ensure that qualified inspectors are available to respond to residents and business owners in catastrophe areas as defined by Article 21.49 most in need of building, re-building, adding to, or repairing of structures after a catastrophe. The Department anticipates that these temporary appointments will result in the relatively prompt availability of persons who are willing and qualified to perform windstorm inspections on structures to be considered insurable property for windstorm and hail insurance. Texans benefit from a strong and prompt recovery from devastating natural events like hurricanes and other catastrophes and from an efficient inspection system that provides prompt response to those in need. There is no mandatory cost because the appointees are selected from voluntary applicants. There are no persons who are required to comply with the proposed new section. The anticipated costs to persons who choose to apply for a temporary appointment will be the time to complete the application, obtain the required documents to submit with the application, and to attend the mandatory Department-sponsored two-hour orientation and training session. Because of the uncertainty of which persons who are eligible will actually participate in this voluntary temporary appointment process, it is not possible to estimate exact costs. However, eligible persons who are interested in voluntarily participating will be able to estimate their individual costs. There are no application or other fees required under the proposed new section. The Department expects no differential impact between small, large, and micro-businesses that decide to participate in this temporary appointment process. The cost per hour of labor for the appli-

cation process should not vary between small, large, and micro-businesses of the same type. Further, the Department has considered the purpose of the statute, which requires windstorm inspections to be performed by qualified inspectors who must be approved and appointed or employed by the Department to perform building inspections, and has determined that it is neither legal nor feasible to exempt small or micro-businesses or to waive compliance for small or micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on July 3, 2006, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Alexis Dick, Deputy Commissioner, Inspections Division, Mail Code 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of proposed new §5.4607 in a public hearing under Docket Number 2642, scheduled for 10:00 a.m. on June 21, 2006; in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

The new section is proposed pursuant to the Insurance Code Article 21.49 §6A and §36.001. Article 21.49 §6A provides that a windstorm inspection may only be performed by a qualified inspector who must be approved and appointed or employed by the Department to perform building inspections. Section 6A also provides that a qualified inspector includes a person determined by the Department to be qualified to perform building inspections because of training or experience and an inspector who is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc. (now known as the International Code Council) who has certifications as a buildings inspector and coastal construction inspector and who also complies with other requirements specified by rule by the Commissioner. Article 21.49 §5A provides that the Commissioner, after notice and hearing, may issue any orders which the Commissioner considers necessary to carry out the purposes of the Texas Windstorm Insurance Association Act. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: Insurance Code Article 21.49

§5.4607. Requirements for the Appointment of Temporary Qualified Windstorm Inspectors for a Limited Period on an As-needed Basis.

(a) Purpose. The purpose of this section is to specify the procedures for the Commissioner of Insurance to appoint temporary qualified inspectors for a specified limited period to conduct inspections for windstorm and hail insurance pursuant to the Insurance Code Article 21.49 §6A and to specify qualifications, requirements, and procedures pursuant to the Insurance Code Article 21.49 §6A(d) for the appointment of persons to perform such inspections.

(b) Public Hearing. The Commissioner may make the temporary inspector appointments only upon a determination by the Commissioner after notice and a public hearing pursuant to the Insurance Code Article 21.49 §5A that qualified inspectors are not reasonably available in the first tier coastal counties specified in Article 21.49 and/or in designated catastrophe areas as defined by Article 21.49 §3(h). If the

Commissioner makes such a determination, the Commissioner shall issue an order specifying the reasons for the determination, the designated catastrophe areas in which the temporary inspector appointments are authorized, the types of inspections temporary appointees are authorized to perform, the period of time for which the appointments are effective, and any other requirements necessary to properly ensure the availability of qualified inspectors as needed in the designated catastrophe areas.

(c) Qualifications.

(1) Persons appointed under this section must meet the qualifications for appointment under this section and shall perform inspections in accordance with the provisions of this section, §§5.4001 - 5.4010 of this title (relating to the Texas Windstorm Insurance Association plan of operation), §§5.4601 - 5.4605 of this title (relating to inspections for windstorm and hail insurance), the Insurance Code Article 21.49 §6A, and the order issued by the Commissioner pursuant to subsection (b) of this section. The following persons are eligible to apply for an appointment as a temporary qualified inspector:

(A) a person who is certified as a coastal construction inspector by the International Code Council and who has at least two years of construction, design or inspection experience on buildings or structures located in high wind areas; this may include a person employed full-time by a municipality of this state who meets the qualifications as stated in this paragraph; or

(B) a Texas registered architect with construction, design or inspection experience on buildings or structures located in high wind areas; or

(C) any person with experience, education, or training in programs at an accredited university which shall include at a minimum successful completion of at least two years of technical or university training in the field of civil or architectural engineering, the field of architecture, or the field of construction technology or construction science and at least two years of construction, design or inspection experience on buildings or structures located in high wind areas.

(2) Persons applying under the requirements of paragraph (1)(A) of this subsection must affirm to the Commissioner through a sworn statement the current, active, and good-standing status of their certification and/or shall also provide a Certification of Employment affidavit from the municipality as applicable.

(3) Persons applying under the requirements of paragraph (1)(B) of this subsection must affirm to the Commissioner through a sworn statement the current, active, and good-standing status of the architect's registration through the Texas Board of Architectural Examiners.

(4) Persons applying under the requirements of paragraph (1)(C) of this subsection must provide a certified copy of a completed degree, if any; certificate; or transcript.

(d) Definitions. For the purposes of this section, the following words and terms shall have the following meanings:

(1) Appointee--A person who has been issued a temporary appointment as a qualified inspector under this section.

(2) Commissioner--Commissioner of Insurance of the State of Texas.

(3) Department--Texas Department of Insurance.

(4) Person--An individual and includes a resident or non-resident of this state.

(e) Application. A person applying for a temporary inspector appointment under this section must complete and file an application on a form prepared, maintained, and obtainable from the Department.

(f) Training. An appointee must attend within 30 days of the person's appointment a two-hour orientation and training session provided by the Department at one of its field offices or in Austin, Texas.

(g) Financial interest prohibitions. An appointee must not have a financial interest either directly or indirectly in or be employed by a business that is financially interested either directly or indirectly in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building, nor have current employment or accept compensation or accept other employment or compensation during the period of appointment which could reasonably be expected to impair the appointee's independence of judgment in the performance of inspections pursuant to this section.

(h) Inspection forms. An appointee shall comply with and utilize all windstorm inspection forms required by §5.4604 of this title (relating to appointment of engineers as qualified inspectors), with such forms modified to substitute "appointed temporary inspector" for "engineer" as applicable.

(i) Department oversight. Except as otherwise provided in this section, an appointee is subject to all provisions of §5.4604 of this title including oversight by the Department as specified in subsection (h) of §5.4604. If there is a conflict between the provisions of this section and the provisions of §5.4604 of this title, this section controls.

(j) Delegation prohibition. An appointee is prohibited from delegating the duties under this section to any other person. The delegation/assistance provision of subsection (g)(5) of §5.4604 of this title shall not apply to an appointee.

(k) Limited authorization.

(1) An appointee is only authorized to perform inspections of structures for insurability for windstorm and hail insurance as provided in the Commissioner's order issued pursuant to subsection (b) of this section. No other types of inspections by the temporary inspector appointees will be considered valid for purposes of the Insurance Code Article 21.49.

(2) An appointment made under this section is valid only for the designated catastrophe areas and period of time specified by the Commissioner in the Commissioner's order issued pursuant to subsection (b) of this section; at the end of such period or upon action by the Department, the appointment will expire.

(l) Administrative remedies. In addition to any other remedy available under the Insurance Code Article 21.49 §6A, and Chapters 82 and 84, and §5.4604 of this title (relating to appointment of engineers as qualified inspectors), the Department may issue an emergency cease and desist order pursuant to the Insurance Code Chapter 83 to any person who violates any provision of this subchapter or any other rule or statute relating to inspections of structures to be considered insurable property for windstorm and hail insurance.

(m) Severability clause. If a court of competent jurisdiction holds that any provision of this section is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this section shall remain in effect.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602934

Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 463-6327

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER B. MUSSELS AND CLAMS

The Texas Parks and Wildlife Department (TPWD) proposes the repeal of and new §57.157, concerning Mussels and Clams.

Brief Explanation of the Rule.

Proposed new §57.157(a) would prohibit taking or possession of mussels (or clams) except as provided elsewhere in the subchapter.

Proposed new §57.157(b) would establish size limits for take and possession of mussels under either a commercial license or a recreational fishing license. The size limits reflect the age at which various species of mussels, especially those species that are popular with commercial collectors, have reached maturity. Mussels are very long-lived and slow-growing animals, often taking up to 10 years to reach reproductive maturity. The minimum size limits are necessary to ensure that mussels are able to grow until they reach reproductive maturity, thus ensuring the ability of mussel populations to perpetuate themselves.

Proposed new §57.157(c) would allow the harvest of mussels and clams only by hand. Hand harvesting is the only way to ensure that only those mussels of legal size are harvested. Mechanical harvesting negatively affects non-target species and water quality. The proposed provision is necessary to protect mussels and clams that have not yet reached reproductive maturity.

Proposed new §57.157(d) would prohibit the harvest of mussels at night and on certain named stream segments and reservoirs. The prohibition on night musseling is necessary for law enforcement purposes. Because musseling is an underwater activity, it is difficult to impossible for law enforcement personnel to detect persons engaged in musseling at night. The proposed new provision also would prohibit the harvest of mussels and clams on 16 named stream segments and reservoirs where, based on biological data, the department has determined that mussel populations should be protected from harvest. These locations are proposed because they support populations of rare and endemic mussel species, or are important for maintaining, repopulating, or allowing recovery of mussels in watersheds where they have been depleted. They are:

Big Cypress Creek from the dam at Lake Bob Sandlin downstream to U.S. Highway 271 in Camp County; the Sabine River from the dam at Lake Tawakoni downstream to State Highway 19 in Rains and Van Zandt counties, from FM 14 to State Highway 155 in Smith County and from State Highway 43 downstream to U.S. Highway 59 in Harrison and Panola counties; the Angelina

River from its source in Rusk County to its confluence with the Neches River, including B. A. Steinhagen Reservoir in Jasper County; the Neches River from the dam at Lake B. A. Steinhagen downstream to its confluence with Pine Island Bayou in Orange County; the Trinity River from State Highway 7 in Leon and Houston counties downstream to the SH10 in Walker and Trinity counties; Live Oak Creek from U.S. Highway 290 west of Fredericksburg in Gillespie County downstream to the confluence of the Pedernales River in Gillespie County; the Brazos River from the dam at Possum Kingdom Reservoir in Palo Pinto County downstream to FM 258 in Parker County; the Guadalupe River from the Upper Guadalupe River Authority dam in Kerr County downstream to the Flat Rock Dam in Kerr County; the Concho River from the mouth of Kickapoo Creek downstream to the U.S. Highway 83 bridge in Concho County; the San Saba River from FM 864 in Menard County downstream to the U.S. Highway 87 bridge in Menard County; the Guadalupe River from the dam at Lake Wood in Gonzales County downstream to the confluence of the San Marcos River in Gonzales County; the San Marcos River from its source in Hays County downstream to the confluence with the Guadalupe River in Gonzales County; Pine Creek from its source in Lamar County to its confluence with the Red River, in Red River County; Sanders Creek from its source in Fannin County to the confluence with the Red River in Lamar County; Elm Creek from its source downstream to the dam at Elm Creek Lake at Ballinger City Park in Runnels County; the Rio Grande from Columbia Bridge in Webb County downstream to the Webb/Zapata county line.

Proposed new §57.157(e) would allow a person with a valid fishing license (or a resident exempt from licensing) to harvest not more than 25 pounds per day of whole mussels and clams or 12 pounds of mussel and clam shells, as is specifically authorized by statute (Parks and Wildlife Code §78.005).

Proposed new §57.157(f) would establish the criteria for the issuance of a commercial mussel and clam fisherman's license. Beginning in license year 2006-2007, a commercial mussel and clam fisherman's license would be available only to a person who held a commercial mussel and clam fisherman's license at any time between September 1, 2003 and May 1, 2006 and who continues to purchase a commercial mussel and clam fisherman's license each year thereafter. The department reviewed historical license purchases and noted that 10 of the 13 persons currently holding a commercial mussel and clam fisherman's license also purchased a license between September 1, 2003 and August 31, 2005. In limiting the availability of the special commercial license to persons who have purchased a commercial mussel and clam fisherman's license within the specified timeframe, the department's intent is to cap commercial mussel harvest at current levels without inflicting hardship on persons currently engaged in commercial mussel harvest. Another purpose is to furnish the department with resource location and harvest data upon which to base management and protection strategies. The proposed new subsection would require all persons collecting under a commercial license to keep a daily log and submit an annual report to the department, detailing the number and species of mussels and clams collected by the licensee and allowing for the department to require additional information about significant mussel populations encountered by the licensee. Failure to comply with recordkeeping and reporting requirements could result in license nonrenewal. The subsection also would require licensees to be in physical possession of the license while engaged in take and sale of mussels, and would allow the licensee

to be assisted by other persons, provided the licensee is present and is the only person actually disturbing mussel beds.

Proposed new §57.157(g) would allow the sale of jewelry and collectibles made from lawfully taken clamshell and pearls.

Statement of Public Benefits and Costs.

Bill Provine, Fisheries Biologist, has determined that adoption of the rule would yield significant benefit to the public by protecting a valuable public resource. Mussels are an important component of healthy aquatic ecosystems, both as a food source for many other aquatic and terrestrial organisms, and as an important indicator species. In early life stages, mussels are food sources for a variety of aquatic insects, small fishes, and water birds; as they mature they become significant food sources for larger fishes, waterfowl, and terrestrial animals. Protection of this resource will preserve and enhance the hunting, fishing, and outdoor recreation opportunities that are part of Texas heritage.

Freshwater mussel populations have declined throughout North America. They are sensitive to disturbance because they are relatively immobile organisms, sometimes staying in a single spot for their entire lives. They have a complex life cycle that is easily disrupted, causing reproductive failure. Habitat alteration and loss, illegal and over harvesting, and competition from introduced species are some of the factors in their decline. Mussels are extremely sensitive to toxic substances, since they encounter toxins more immediately than most organisms above them in the food chain and at higher concentrations relative to body mass. Minute levels of some types of toxic substances (e.g., ammonia) or chronic environmental stresses such as low oxygen levels or siltation caused by bed scouring can quickly devastate mussel communities, in many cases long before the environmental change is reflected by other aquatic species.

Nationwide, more species of freshwater mussels are listed as threatened and endangered than any other group of animals. Of the nearly 300 species known to have lived in the U.S., 18 are believed to be extinct, and 60 are currently listed as federally endangered or threatened, including one species occurring in Texas (the Ouachita rock-pocketbook mussel). Texas is home to more than 50 species of freshwater mussels.

Although the commercial demand for freshwater mussels in the United States has historically been for ornamental uses such as buttons, jewelry, and decorative arts, recent commercial activity has centered on Asian demand for mussel shell for the creation of seed pearls for cultured pearl industry.

Commercial harvest of freshwater mussels in Texas has been relatively intense at times, (e.g., 488 commercial licenses sold in 1996); however, pressure during the last several years has declined considerably in response to a contracting market. Only 13 resident and non-resident mussel harvest licenses were sold in the current license year. The department sold no shell-buyer licenses last year, leading to the conclusion that commercial activity involving mussel shell is at or near historic lows, which is confirmed by anecdotal information from the regulated community. At the present time, the commercial harvest of mussels and clams (within specified size limits) in public waters is essentially unrestricted. Any recurrence of high demand, given the continued observed habitat degradation and documented decline in mussel populations, would subject mussel populations to unsustainable increases in additive harvest pressure. Mussels are very long-lived animals, some living over 100 years, and are very slow-growing. Some species valued in commercial trade take as long as 10 years to reach the size at which they may be legally

harvested. Therefore, it is axiomatic that mussels do not recover quickly from over harvest or reductions in populations caused by environmental degradation. Failure to acknowledge the adverse impact of overharvest could lead to more serious biological problems and potential listing activities by the federal government. The proposed new rule is intended to stabilize commercial harvest at current levels while increasing the department's knowledge about and ability to manage mussel populations. The proposed new rule will minimize cost and avoid unnecessary duplication by using commercial collectors to assist the department in monitoring efforts, allowing the department to coordinate and allocate various department assets in the most productive manner.

Persons required to comply with the rule will incur the costs associated with recordkeeping and reporting, since the rule requires a daily log to be kept and the filing of an annual report with the department. It is expected that a person who collects mussels under a commercial license would need to spend no more than 10 minutes per day filling out the daily log, and no more than one hour per year completing the yearly report.

Persons who held a resident or nonresident commercial mussel and clam fisherman's license for the 2003-2004 or 2004-2005 license year or the portion of the 2005-2006 license year prior to May 1, 2006 will be allowed to continue to purchase the commercial license. Persons who did not hold a resident or nonresident commercial mussel and clam fisherman's license for the 2003-2004, 2004-2005, or portion of the 2005-2006 license year prior to May 1, 2006 will be subject to the bag and possession limits in §57.157(b). Thus, the proposed rule would have the effect of excluding from the commercial mussel fishery all but the 13 persons who, according to TPWD records, held a resident or nonresident commercial mussel and clam fisherman's license for the 2003-2004 or 2004-2005 license year or portion of the 2005-2006 license year prior to May 1, 2006. Any or all of the remaining 13 licenses could be retired if not renewed or if the holder were convicted of violations. These licenses must be renewed every year, otherwise they will be permanently lost.

Effect on Small and Micro-Businesses.

TPWD believes that if an individual or business has not held a Texas commercial mussel and clam fisherman's license at any time from September 1, 2003 to May 1, 2006, that person is not "in the business" of commercial mussel and clam fishing in Texas. Thus, limiting the fishery to persons who have held a commercial mussel and clam fisherman's licenses for any part of the time period from September 1, 2003 to May 1, 2006 will not affect existing small or micro-businesses. The reporting and recordkeeping requirements will apply to small and micro-businesses. Persons required to comply with the rule will incur the costs associated with recordkeeping and reporting under the commercial license. A daily log must be kept, and a yearly report must be provided. It is expected that a person who collects mussels under a commercial license would need to spend no more than 10 minutes per day filling out the daily log, and no more than one hour per year completing the yearly report. These requirements would apply equally to small businesses, micro-business, and larger businesses; however, TPWD surveys indicate that all of the holders of commercial mussel and clam fisherman's licenses are small or micro-businesses. Thus, there is no difference between cost of compliance on small and micro-business versus larger businesses.

Regulatory Impact Analysis. Although Government Code, §2001.0225, Regulatory Analysis of Major Environmental

Rules, does not apply to the proposed rule, TPWD nonetheless provides the regulatory analysis, as follows. The benefit TPWD anticipates as a result of implementing the rule is protection of a valuable public resource. Mussels are an important component of healthy aquatic ecosystems, both as a food source for many other aquatic and terrestrial organisms, and as an important indicator species. In early life stages, mussels are food sources for a variety of aquatic insects, small fishes, and water birds; as they mature they become significant food sources for larger fishes, waterfowl, and terrestrial animals. Protection of this resource will preserve and enhance the hunting, fishing, and outdoor recreation opportunities that are part of Texas heritage.

Freshwater mussel populations have declined throughout North America. They are sensitive to disturbance because they are relatively immobile organisms, sometimes staying in a single spot for their entire lives. They have a complex life cycle that is easily disrupted, causing reproductive failure. Habitat alteration and loss, illegal and over harvesting, and competition from introduced species are some of the factors in their decline. Mussels are extremely sensitive to toxic substances, since they encounter toxins more immediately than most organisms above them in the food chain and at higher concentrations relative to body mass. Minute levels of some types of toxic substances (e.g., ammonia) or chronic environmental stresses such as low oxygen levels or siltation caused by bed scouring can quickly devastate mussel communities, in many cases long before the environmental change is reflected by other aquatic species.

Nationwide, more species of freshwater mussels are listed as threatened and endangered than any other group of animals. Of the nearly 300 species known to have lived in the U.S., 18 are believed to be extinct, and 60 are currently listed as federally endangered or threatened, including one species occurring in Texas (the Ouachita rock-pocketbook mussel). Texas is home to more than 50 species of freshwater mussels.

Although the commercial demand for freshwater mussels in the United States has historically been for ornamental uses such as buttons, jewelry, and decorative arts, recent commercial activity has centered on Asian demand for mussel shell for the creation of seed pearls for cultured pearl industry.

Commercial harvest of freshwater mussels in Texas has been relatively intense at times, (e.g., 488 commercial licenses sold in 1996); however, pressure during the last several years has declined considerably in response to a contracting market. Only 11 resident and non-resident mussel harvest licenses were sold during the 2004-2005 license year. The department sold no shell-buyer licenses last year, leading to the conclusion that commercial activity involving mussel shell is at or near historic lows, which is confirmed by anecdotal information from the regulated community. At the present time, the commercial harvest of mussels and clams (within specified size limits) in public waters is essentially unrestricted. Any recurrence of high demand, given the continued observed habitat degradation and documented decline in mussel populations, would subject mussel populations to unsustainable increases in additive harvest pressure. Mussels are very long-lived animals, some living over 100 years, and are very slow-growing. Some species valued in commercial trade take as long as 10 years to reach the size at which they may be legally harvested. Therefore, it is axiomatic that mussels do not recover quickly from over harvest or reductions in populations caused by environmental degradation. Failure to acknowledge the adverse impact of overharvest could lead to more serious biological problems and potential listing activities

by the federal government. The proposed new rule is intended to stabilize commercial harvest at current levels while increasing the department's knowledge about and ability to manage mussel populations. The proposed new rule will minimize cost and avoid unnecessary duplication by using commercial collectors to assist the department in monitoring efforts, allowing the department to coordinate and allocate various department assets in the most productive manner.

Persons required to comply with the rule as proposed will incur costs associated with recordkeeping and reporting, since the rule requires a daily log to be kept and the filing of an annual report with the department. It is expected that a person who collects mussels under a commercial license would need to spend no more than 10 minutes per day filling out the daily log, and no more than one hour per year completing the yearly report.

Persons who held a resident or nonresident commercial mussel and clam fisherman's license for the 2003-2004, 2004-2005 or portion of the 2005-2006 license year prior to May 1, 2006 will be allowed to continue to purchase the commercial license. Persons who did not hold a resident or nonresident commercial mussel and clam fisherman's license for the 2003-2004, 2004-2005 or 2005-2006 license year will be subject to the bag and possession limits in §57.157(b). Thus, the proposed rule would have the effect of excluding from the commercial mussel fishery all but the 13 persons who, according to TPWD records, held a resident or nonresident commercial mussel and clam fisherman's license during the time period from September 1, 2003 to May 1, 2006. Any or all of the remaining 13 licenses could be retired if not renewed or if the holder were convicted of violations. These licenses must be renewed every year; otherwise they will be permanently lost.

An alternative method of achieving the purpose of the rule that was considered was placing all mussel collection under the recreational limit. This would have effectively abolished the commercial mussel fishery and led to a loss of income to those who are engaged in this business. Moreover, the commercial mussel industry would not have been enlisted in collecting and reporting data about this resource. TPWD proposes the current rule because it will allow the commercial mussel fishery to continue at its current level without economic dislocation.

TPWD is not aware of a performance-oriented, voluntary, or market-based approach that would substitute for the required license and data collection, and the commercial mussel fisherman's license is created by statute. The opportunity for public comments set forth below applies as well to the draft impact analysis and all comments on the draft impact analysis will be addressed in the publication of the final regulatory analysis.

Data and methodology used include the following studies, as well as surveys of the industry.

Howells, R.G. 1995. Distributional surveys of freshwater bivalves in Texas. Status survey for 1993. Texas Parks and Wildlife Department, Management Data Series 119, Austin.

Howells, R.G. 1996. Distributional surveys of freshwater bivalves in Texas. Status survey for 1994. Texas Parks and Wildlife Department, Management Data Series 120, Austin.

Howells, R.G. 1997. Distributional surveys of freshwater bivalves in Texas. Status survey for 1996. Texas Parks and Wildlife Department, Management Data Series 144, Austin.

Howells, R.G. 1998. Distributional surveys of freshwater bivalves in Texas. Status survey for 1997. Texas Parks and Wildlife Department, Management Data Series 147, Austin.

Howells, R.G. 1999. Distributional surveys of freshwater bivalves in Texas. Status survey for 1998. Texas Parks and Wildlife Department, Management Data Series 161, Austin.

Howells, R.G. 2000. Distributional surveys of freshwater bivalves in Texas. Status survey for 1999. Texas Parks and Wildlife Department, Management Data Series 170, Austin.

Howells, R.G. 2001. Distributional surveys of freshwater bivalves in Texas. Status survey for 2000. Texas Parks and Wildlife Department, Management Data Series 187, Austin.

Howells, R.G. 2002. Distributional surveys of freshwater bivalves in Texas. Status survey for 2001. Texas Parks and Wildlife Department, Management Data Series 200, Austin.

Howells, R.G. 2003. Distributional surveys of freshwater bivalves in Texas. Status survey for 2002. Texas Parks and Wildlife Department, Management Data Series 214, Austin.

Howells, R.G. 2004. Distributional surveys of freshwater bivalves in Texas. Status survey for 2003. Texas Parks and Wildlife Department, Management Data Series 222, Austin.

Howells, R.G. 2005. Distributional surveys of freshwater bivalves in Texas. Status survey for 2004. Texas Parks and Wildlife Department, Management Data Series 233, Austin.

Howells, R.G., C.M. Mather, and J.A.M. Bergmann. 2000. Impacts of dewatering and cold on freshwater mussels (Unionidae) in B.A. Steinhagen Reservoir, Texas. The Texas Journal of Science, Special Supplement 52(4):93-104.

Howells, R.G., J.L. Dobie, W.L. Lindermann, and J.A. Crone. 2003. Discovery of a new population of endemic *Lampsilis bracteata* in Central Texas, with comments on species status. *Ellipsaria* 5(2):5-6.

Neck, R.W., and R.G. Howells. 1994. Status of the Texas heelsplitter, *Potamilus amphichaenus* (Frierson, 1898). Texas Parks and Wildlife Department, Special Report, Ingram.

Strenth, N.E., R.G. Howells, and A. Correa-Sandoval. 2004. New records of the Texas hornshell *Popenaias popeii* (Bivalvia: Unionidae) from Texas and Mexico. The Texas Journal of Science 56(3):223-230.

Fiscal Note.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be minimal fiscal implications to state government as a result of enforcing or administering the rule. The department has determined that there will be some small cost associated with recordkeeping in the administration of the commercial license; however, the cost will be absorbed using current staff and resources. The department also notes that the cost of obtaining the same data using department staff and resources would be much greater. There will be no fiscal implications for units of local government.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Request for Public Comments.

Comments on the proposed rule may be submitted to Bill Provine, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4855 (e-mail: bill.provine@tpwd.state.tx.us).

31 TAC §57.157

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Parks and Wildlife Code, Chapter 78 and §78.006. Under Parks and Wildlife Code, Chapter 78, the Texas Parks and Wildlife Commission is authorized to regulate the taking, possession, purchase, and sale of mussels and clams; the quantity and size of mussels and clams that may be taken, possessed, sold, or purchased; and the times, places, conditions, and means and manner of taking mussels and clams. Under §78.006, the commission is required to consider the best scientific information available in determining measures to prevent the depletion of mussels and clams; measures to manage mussels and clams; measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and measures that will enhance enforcement.

The repeal is also proposed under Parks and Wildlife Code, §§67.001 - 67.003 and §67.0041. Under Parks and Wildlife Code, §67.001, mussels are a nongame species by virtue of the fact that they are indigenous to Texas and are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species (except for the Ouachita rock pocketbook), alligators, marine penaeid shrimp, or oysters. Under Parks and Wildlife Code, §67.002, the department is required to "develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully." Under §67.003, the department is required to "conduct investigations of nongame fish and wildlife to develop information on populations, distribution, habitat needs, limiting factors, and any other biological or ecological data to determine appropriate management and regulatory information." Under §67.0041, the department is authorized to issue licenses for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

The proposed repeal affects Parks and Wildlife Code, Chapters 67 and 78.

§59.157. Mussels and Clams.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2006.

TRD-200602881

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 389-4775

31 TAC §57.157

The new section is proposed under Parks and Wildlife Code, Chapter 78 and §78.006. Under Parks and Wildlife Code, Chapter 78, the Texas Parks and Wildlife Commission is authorized to regulate the taking, possession, purchase, and sale of mussels and clams; the quantity and size of mussels and clams that may be taken, possessed, sold, or purchased; and the times, places, conditions, and means and manner of taking mussels and clams. Under §78.006, the commission is required to consider the best scientific information available in determining measures to prevent the depletion of mussels and clams; measures to manage mussels and clams; measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and measures that will enhance enforcement.

The new section is also proposed under Parks and Wildlife Code, §§67.001 - 67.003 and §67.0041. Under Parks and Wildlife Code, §67.001, mussels are a nongame species by virtue of the fact that they are indigenous to Texas and are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species (except for the Ouachita rock pocketbook), alligators, marine penaeid shrimp, or oysters. Under Parks and Wildlife Code, §67.002, the department is required to "develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully." Under §67.003, the department is required to "conduct investigations of nongame fish and wildlife to develop information on populations, distribution, habitat needs, limiting factors, and any other biological or ecological data to determine appropriate management and regulatory information." Under §67.0041, the department is authorized to issue licenses for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

The proposed rule affects Parks and Wildlife Code, Chapters 67 and 78.

§57.157. Mussels and Clams.

(a) General prohibition. It is unlawful for any person to take or possess mussels and clams except as provided under this subchapter.

(b) Size limits. No person may take or possess mussels or clams, including their shells, that can be passed through a ring with an inside diameter (I.D.) specified for the species, as follows:
Figure: 31 TAC §57.157(b)

(c) Means, and methods. Mussels and clams may be taken only by hand.

(d) Seasons, times, and places.

(1) It is unlawful for any person to take mussels and clams from 30 minutes after sunset to 30 minutes before sunrise of each day.

(2) Except for the stream segments and reservoirs listed in this paragraph, all public waters of the state are open to mussel and clam harvest.

(A) Big Cypress Creek from the Dam at Lake Bob Sandlin downstream to U.S. Highway 271 in Camp County;

(B) Sabine River from the dam at Lake Tawakoni downstream to State Highway 19 in Rains and Van Zandt counties, from FM 14 to State Highway 155 in Smith County and from State

Highway 43 downstream to U.S. Highway 59 in Harrison and Panola counties;

(C) Angelina from its source in Rusk County to its confluence with the Neches River to and including B. A. Steinhagen Reservoir in Jasper County;

(D) Neches River from the Dam at Lake B. A. Steinhagen downstream to its confluence with Pine Island Bayou in Orange County;

(E) Trinity River from State Highway 7 in Leon and Houston counties downstream to the SH10 in Walker and Trinity Counties;

(F) Live Oak Creek from U.S. Highway 290 west of Fredericksburg in Gillespie County downstream to the confluence of the Pedernales River in Gillespie County;

(G) Brazos River from the dam at Possum Kingdom Reservoir in Palo Pinto County downstream to FM 258 in Parker County.

(H) The Guadalupe River from UGRA dam in Kerr County downstream Flat Rock Dam in Kerr County.

(I) The Concho River from the mouth of Kickapoo Creek downstream to the U.S. Highway 83 Bridge in Concho County;

(J) The San Saba River from FM 864 in Menard County downstream to the U.S. Highway 87 Bridge in Menard County;

(K) The Guadalupe River from the dam at Lake Wood in Gonzales County downstream to the confluence of the San Marcos River in Gonzales County;

(L) The San Marcos River from its source in Hays County downstream to the confluence with the Guadalupe River in Gonzales County;

(M) Pine Creek from its source in Lamar County to its confluence with the Red River in Red River County;

(N) Sanders Creek from its source in Fannin County to the confluence with the Red River in Lamar County; and

(O) Elm Creek from its source downstream to the dam at Elm Creek Lake at Ballinger City Park in Runnels County.

(P) The Rio Grande from Columbia Bridge in Webb County downstream to the Webb/Zapata County line.

(e) Recreational bag limit. A person who possesses a valid fishing license or who is a resident and is exempt from licensing requirements under Parks and Wildlife Code, §46.002 may take or harvest from the public water of the state not more than 25 pounds a day of whole mussels and clams, or 12 pounds of mussel and clam shells.

(f) Resident and nonresident commercial licenses. Except as provided in subsection (g) of this section, no person may take any mussels, clams, or their shells from public water of the state for commercial purposes without a resident or nonresident commercial mussel and clam fisherman's license.

(1) A license for taking mussels, clams, or their shells from the public water of the state for commercial purposes may be obtained by completing and submitting an application to the department on a form supplied by the department.

(2) The license authorized by this subsection:

(A) is valid only for the license year for which it is issued; and

(B) may be obtained only by a person who:

(i) held a resident or nonresident commercial mussel and clam fisherman's license valid for the 2003-2004 or 2004-2005 license year or who obtained a commercial mussel and clam fisherman's license between September 1, 2005 and May 1, 2006; and

(ii) continues to purchase a resident or nonresident commercial mussel and clam fisherman's license every year thereafter.

(3) Holders of a resident or nonresident commercial mussel and clam fisherman's license shall maintain a daily log.

(A) The daily log shall be on a form supplied by the department and shall describe:

(i) the number and weight of each species of mussels or clams taken each day by the person;

(ii) the name of the stream or reservoir where the take occurred; and

(iii) the county of take.

(B) The department may request additional information concerning significant populations of mussels or clams encountered by a licensee.

(4) The daily log required by this subsection shall be kept current and shall be presented at the request of any department employee acting within the scope of official duties.

(5) Holders of resident or nonresident commercial mussel and clam fisherman's licenses shall complete and submit an annual report to the department by December 31 of each year. The annual report shall be on a form supplied or approved by the department.

(6) The department may refuse to issue a resident or nonresident commercial mussel and clam fisherman's license to any person who fails to comply with the recordkeeping requirements of this section.

(7) A person engaging in any activity involving the take and sale of mussels for commercial purposes, including offering for sale or export of mussels or clams shall physically possess the resident or nonresident commercial mussel and clam fisherman's license on his or her person during all such activities.

(8) A holder of a resident or nonresident commercial mussel and clam fisherman's license may be assisted by other persons, provided the licensee is present and is the only person physically disturbing mussel or clam beds.

(g) Exception. A person who possesses a valid fishing license or who is a resident and is exempt from licensing requirements under Parks and Wildlife Code, §46.002, may take or harvest from the public water of the state not more than 25 pounds a day of whole mussels and clams, or 12 pounds of mussel and clam shells, for use and sale in jewelry and collectibles.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 23, 2006.

TRD-200602882

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 143. EXECUTIVE CLEMENCY

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §143.43 and §143.57, concerning the procedure in capital reprieve cases and commutation of death sentence to lesser penalty. The amendments are proposed for the purpose of clarifying the address for submission of an application and supplemental information for a reprieve and commutation of death sentence to a lesser penalty.

Rissie Owens, Chair of the Board, has determined, that for the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the amended rules as proposed are in effect, the public benefit anticipated as a result of the amendments to this section will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

SUBCHAPTER D. REPRIEVE OF EXECUTION

37 TAC §143.43

The amended rules are proposed under Article IV, Section 11 of the Texas Constitution and Article 48.01, Code of Criminal Procedure, that invest the Board of Pardons and Paroles with the power to recommend clemency, including pardons, commutations of sentence, and reprieves; and under §508.036(b), Government Code, that provides the Board with authority to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles.

No other statutes, articles or codes are affected by these amendments.

§143.43. Procedure in Capital Reprieve Cases.

(a) The written application in behalf of a convicted person seeking a board recommendation to the governor of a reprieve from execution must be delivered to the Texas Board of Pardons and Paroles, Clemency Section, 8610 Shoal Creek Boulevard, Austin, Texas 78757, not later than the twenty-first calendar day before the execution is scheduled. If the twenty-first calendar day before the execution is scheduled falls on a weekend or state observed holiday, the application shall be delivered not later than the next business day. Otherwise, the applicant's recourse will be directly to the governor.

(b) All supplemental information, including but not limited to amendments, addenda, supplements, or exhibits, must be submitted in writing and delivered to the Texas Board of Pardons and Paroles, Clemency Section, 8610 Shoal Creek Boulevard, Austin, Texas 78757, not later than the fifteenth calendar day before the execution is sched-

uled. If the fifteenth calendar day before the execution is scheduled falls on a weekend or state observed holiday, all additional information including but not limited to amendments, addenda, supplements, or exhibits shall be delivered not later than the next business day.

(c) Any information filed with the application, including but not limited to amendments, addenda, supplements, or exhibits, which require reproduction facilities, equipment, or technology not operated by the board, must be provided by the applicant in an amount sufficient to allow review by all members of the board. An amount sufficient shall mean not less than 10 and not more than 20 copies of the duplicate item.

(d) A convicted person seeking a board recommendation to the governor of a reprieve from execution may request an interview with a member of the board. Such request shall be included in the written application or any supplement filed therewith in accordance with this section.

(e) Upon receipt of a request for an interview, the presiding officer (chair) shall designate at least one member of the board to conduct the requested interview. Such interview shall occur at the confining unit of TDCJ. Attendance at such interviews shall be limited to the convicted person, the designated board member(s), and TDCJ staff. The board may consider statements by the inmate made at such interviews when considering the inmate's application for reprieve.

(f) The board shall consider and decide applications for reprieve from execution. Upon review, a majority of the board, or a majority thereof, in written and signed form, may:

- (1) recommend to the governor a reprieve from execution;
- (2) not recommend a reprieve from execution; or
- (3) set the matter for a hearing as soon as practicable and at a location convenient to the board and the parties to appear before it.

(g) When the board sets a hearing pursuant to subsection (f)(3) of this section, it shall notify the trial officials of the county of conviction and the attorney general of the State of Texas and allow any such official(s), or the designated representatives thereof, the opportunity to attend the hearing and/or to present any relevant information. At the time of notifying the trial officials, the board shall also notify any representative of the family of the victim (who has previously requested to be notified) of the receipt of the application, the setting of a hearing, and of said representative or family member's rights to provide any written comments or to attend the hearing.

(h) All hearings conducted by the board under this section shall be in open session pursuant to requirements of the Texas Open Meetings Act, Article 6252-17. For the purpose of discussing matters which are deemed confidential by statute, or where otherwise authorized by the provisions of the Texas Open Meetings Act, the proceedings may be conducted in executive session closed to members of the general public, for that limited purpose. Only those persons whose privacy interests and right to confidentiality may be abridged by discussion involving disclosure of confidential information may be allowed to meet with members of the board in their executive session to discuss that information. No decision, vote, or final action by the board shall be made during a closed meeting; the board's decision, vote, or final action shall be made and announced in an open meeting. The hearing may be recessed prior to its completion and reconvened pursuant to the directions of the board.

(i) Advocates for and against the death penalty, generally, and members of the general public may present written information for the board's consideration at its central office headquarters at any reasonable time.

(j) After the conclusion of the hearing, the board shall render its decision, reached by majority vote, within a reasonable time, which decision shall be either to:

(1) recommend to the governor a reprieve from execution;

(2) not recommend a reprieve from execution; or

(3) recess the proceedings without rendering a decision on the merits, if a reprieve has been granted by the governor or if a court of competent jurisdiction has granted a stay of execution.

(k) Each of the provisions of this section and §143.42 of this title (relating to Reprieve Recommended by Board) are subject to waiver by the board when it finds that there exists good and adequate cause to suspend said provisions and adopt a different procedure which it finds to be better suited to the exigencies of the individual case before it.

(l) Successive or repetitious reprieve applications submitted in behalf of the same condemned felon may be summarily denied by the board without meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602928

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 406-5388



SUBCHAPTER E. COMMUTATION OF SENTENCE

37 TAC §143.57

The amended rules are proposed under Article IV, Section 11 of the Texas Constitution and Article 48.01, Code of Criminal Procedure, that invest the Board of Pardons and Paroles with the power to recommend clemency, including pardons, commutations of sentence, and reprieves; and under §508.036(b), Government Code, that provides the Board with authority to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles.

No other statutes, articles or codes are affected by these amendments.

§143.57. Commutation of Death Sentence to Lesser Penalty.

(a) The board will consider recommending to the governor a commutation of death sentence to a sentence of life imprisonment or the appropriate maximum penalty that can be imposed upon receipt of:

(1) a request from the majority of the trial officials of the court of conviction; or

(2) a written request of the convicted person or representative setting forth all grounds upon which the application is based, stating the full name of the convicted person, the county of conviction, and the execution date.

(b) The written application in behalf of a convicted person seeking a board recommendation to the governor of commutation of the death sentence to a lesser penalty must be delivered to the Texas Board of Pardons and Paroles, Clemency Section, 8610 Shoal Creek

Boulevard, Austin, Texas 78757, not later than the twenty-first calendar day before the day the execution is scheduled. If the twenty-first calendar day before the execution is scheduled falls on a weekend or state observed holiday, the application shall be delivered not later than the next business day.

(c) All supplemental information not filed with the application, including but not limited to amendments, addenda, supplements, or exhibits, must be submitted in writing and delivered to the Texas Board of Pardons and Paroles, Clemency Section, 8610 Shoal Creek Boulevard, Austin, Texas 78757, not later than the fifteenth calendar day before the execution is scheduled. If the fifteenth calendar day before the execution is scheduled falls on a weekend or state observed holiday, all additional information including but not limited to amendments, addenda, supplements, or exhibits shall be delivered not later than the next business day.

(d) Any information filed with the application, including but not limited to amendments, addenda, supplements, or exhibits, which require reproduction facilities, equipment, or technology not operated by the board must be provided by the applicant in an amount sufficient to allow review by all members of the board. An amount sufficient shall mean not less than 10 and not more than 20 copies of the duplicate item.

(e) A convicted person seeking a board recommendation to the governor of commutation of the death sentence to a lesser penalty may request an interview with a member of the board. Such request shall be included in the written application or any supplement filed therewith in accordance with this section.

(f) Upon receipt of a request for an interview, the presiding officer (chair) shall designate at least one member of the board to conduct the requested interview. Such interview shall occur at the confining unit of TDCJ. Attendance at such interviews shall be limited to the convicted person, the designated board member(s), and TDCJ staff. The board may consider statements by the inmate made at such interviews when considering the inmate's application for commutation of the death sentence to a lesser penalty.

(g) The board shall consider and decide applications for commutation of the death sentence to a lesser penalty. Upon review, a majority of the board, or a majority thereof, in written and signed form, may:

(1) recommend to the governor the commutation of the death sentence to a lesser penalty;

(2) not recommend commutation of the death sentence to a lesser penalty; or

(3) set the matter for a hearing pursuant to §143.43 of this Chapter (relating to Procedure in Capital Reprieve Cases).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602930

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 406-5388



CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.3

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §145.3, concerning policy statements relating to parole release decisions by the Board of Pardons and Paroles. The amendment is proposed for the purpose of clarifying the language of the rule.

Rissie Owens, Chair of the Board, has determined, that for the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the amended rule as proposed are in effect, the public benefit anticipated as a result of the amendment to this section will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 211 W. 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.036, 508.0441, and 508.141, Government Code. Section 508.036 provides the board with the authority to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.141 provides the board with the authority to consider and order release on parole.

No other statutes, articles, or codes are affected by the amendment.

§145.3. Policy Statements Relating to Parole Release Decisions by the Board of Pardons and Paroles.

To aid the Board of Pardons and Paroles in its analysis and research of parole release, the board adopts the following policies.

(1) Release to parole is a privilege, not an offender right, and the parole decision maker is vested with complete discretion to grant, or to deny parole release as defined by statutory law.

(A) Candidates for parole are to be evaluated on an individual basis.

(B) There are no mandatory rules or guidelines that must be followed in every case because each offender is unique. The board and parole commissioners have the statutory duty to make release decisions which are only in the best interest of society. Parole panels use parole guidelines as a tool to aid in the discretionary parole decision process.

(2) The board will reconsider for release an offender other than an offender serving a sentence for an offense listed in §508.149(a), Government Code, as soon as practicable after the first anniversary of the date of denial, provided the decision to deny parole is on or after January 1, 2004, and the offender is otherwise eligible for consideration.

(3) An offender will be considered for parole when eligible and when the offender meets the following criteria with regard to behavior during incarceration.

(A) Other than on initial parole eligibility, the person must not have had a major disciplinary misconduct report in the six-month period prior to the date he is reviewed for parole; which has resulted in loss of good conduct time or reduction to a classification status below that assigned during that person's initial entry into TDCJ-ID.

(B) Other than on initial parole eligibility, at the time he is reviewed for parole the person must be classified in the same or higher time earning classification assigned during that person's initial entry into TDCJ-ID.

(C) If any offender who has received an affirmative vote to parole and following the vote, notification is received that the offender has been reduced below initial classification status or has lost good conduct time, the parole decision will be reviewed and revoted by the parole panel that rendered the decision.

(D) A person who has been revoked and returned to custody for a violation of the conditions of release to parole or mandatory supervision will be considered for release to parole or mandatory supervision when eligible.

(E) An offender who is otherwise eligible for parole and who has charges pending alleging a felony offense committed while in TDCJ, and for which a complaint has been filed with a magistrate of the State of Texas, any facility under its supervision, or a facility under contract with TDCJ will not be considered for release to parole [or mandatory supervision].

(F) An offender who is otherwise eligible for release and meets the criteria for Medically Recommended Intensive Supervision (MRIS) as required by Government Code, §508.146, may be considered for release on parole if the parole review date is more than six months from the date of application for MRIS.

(4) Any consideration by a Board member of an offender's litigation activities when determining an offender's candidacy for parole is strictly prohibited. No offender will be denied the opportunity to present to the judiciary, including appellate courts, his or her allegations concerning violations of fundamental constitutional rights. Any consideration of such legal activity during the parole process is a violation of Board policy. In the event parole is denied in violation of this subsection, the offender may pursue a remedy under the special review provisions of §145.17 of this title (relating to Action Upon Review [of Information Not Previously Available]--Release Denied).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602932

Laura McElroy
General Counsel

Texas Board of Pardon and Paroles

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 406-5388

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37 TAC §145.16

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §145.16, concerning action upon special review--release approved. The amendment is proposed to update the language of the section title and to clarify the procedures

regarding subsequent reviews of parole panel votes to approve release to parole or mandatory supervision.

Rissie Owens, Chair of the Board, has determined, that for the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the amended rule as proposed are in effect, the public benefit anticipated as a result of the amendment to this section will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 211 W. 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.036, 508.0441, and 508.141, Government Code. Section 508.036 provides the board with the authority to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.141 provides the board authority to consider and order release on parole.

No other statutes, articles, or codes are affected by the amendment.

§145.16. Action upon Special Review [of Information Not Previously Available]--Release Approved.

(a) Responses received from trial officials or victims after a release to parole or release to mandatory supervision decision shall be considered information not previously available to the parole panel. Provided that release to parole or mandatory supervision has not occurred, the responses shall be referred to the parole panel or to the board office corresponding to the board panel that rendered the release to parole or release to mandatory supervision decision. A case reviewed by a parole panel, pursuant to the receipt of information not previously available to the parole panel, may then:

(1) be continued in a release to parole or release to mandatory supervision status with or without additional conditions of release imposed; or

(2) have the release to parole or release to mandatory supervision decision withdrawn and the next review date set by the parole panel in accordance with applicable provisions of Chapter 145 of this title (relating to Parole Process).

(b) Nothing in this rule is intended to restrict a parole panel member from reconsidering a release vote to parole or mandatory supervision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2006.
TRD-200602921

Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: July 9, 2006
For further information, please call: (512) 406-5388



37 TAC §145.17

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §145.17, concerning action upon special review--release denied. The amendment is proposed to update the language of the section title and to clarify the procedures regarding subsequent reviews of parole panel votes to deny release to parole or mandatory supervision.

Rissie Owens, Chair of the Board, has determined, that for the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the amended rule as proposed are in effect, the public benefit anticipated as a result of the amendment to this section will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 211 W. 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.036, 508.0441, and 508.141, Government Code. Section 508.036 provides the board with the authority to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release.

No other statutes, articles, or codes are affected by the amendment.

§145.17. Action upon Special Review [of Information Not Previously Available]--Release Denied.

(a) This rule provides a forum for receipt and consideration of information not previously available to the parole panel where the decision of the panel was to deny release to parole or mandatory supervision. While affording a remedy for consideration of such information, the Board also intends by this rule to reduce frivolous and duplicate requests for special consideration.

(b) Requests for special review shall apply only to cases reviewed for release to parole or mandatory supervision where the decision of the parole panel was to deny release to parole or mandatory supervision.

(c) All requests for special review shall be in writing.

(d) All requests for special review shall be filed with The Texas Board of Pardons and Paroles, Board Administrator, P.O. Box 13401, Austin, Texas 78711.

(e) The board administrator shall refer to the special review parole panel only those requests for special review which meet the criteria set forth herein.

(f) Requests for special review shall be considered in the following circumstances:

(1) a parole panel denied release to parole or mandatory supervision and a parole panel member who voted with the majority on that panel desires to have the decision reconsidered prior to the next review (NR) date; or

(2) a written request on behalf of an offender is received which cites information not previously available to the parole panel. [~~Information not previously available shall mean only:~~]

~~[(A) responses from trial officials and victims;]~~

~~[(B) a change in an offender's sentence and judgment; or]~~

~~[(C) an allegation that the parole panel has committed an error of law or board rule.]~~

(3) both parole panel members who voted with the majority are no longer active board members or parole commissioners, and the presiding officer (chair) ~~[or designated board member may]~~ places the decision in the special review process to be reconsidered prior to the NR ~~[next review]~~ date.

(g) Information not previously available shall mean only:

(1) responses from trial officials and victims;

(2) a change in an offender's sentence and judgment; or

(3) an allegation that the parole panel has committed an error of law or board rule.

(h) [(g)] A special review parole panel, other than the current voting panel, shall decide and exercise final action on such requests for special review.

(i) [(h)] Upon considering a case for special review, the special review parole panel may take the following action:

(1) defer for request and receipt of further information;

(2) indicate it is a special review consideration, and either; [grant special review; and either]

(A) vote remain set, or

(B) revoke the case in accordance with applicable provisions of Chapter 145 of this title (relating to Parole Process).

(j) The special review parole panel shall not set an offender's NR date on a date later than the previous NR date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602931

Laura McElroy

General Counsel

Texas Board of Pardon and Paroles

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 406-5388



SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.21

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §145.21, concerning parole in absentia (parole review and mandatory supervision for offenders not in actual physical custody of the TDCJ Correctional Institutions Division). The amendment is proposed for the purpose of updating the cross references to §145.16 and §145.17, in the language of the rule.

Rissie Owens, Chair of the Board, has determined, that for the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the amended rule as proposed are in effect, the public benefit anticipated as a result of the amendment to this section will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 211 W. 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.036, 508.0441, and 508.141, Government Code. Section 508.036 provides the board with the authority to adopt rules relating to the decision-making process used by the board and parole panels. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.141 provides the board with the authority to consider and order release on parole.

No other statutes, articles, or codes are affected by the amendment.

§145.21. Parole in Absentia (Parole Review and Mandatory Supervision for Offenders Not in Actual Physical Custody of the TDCJ Correctional Institutions Division).

Offenders serving state prison sentences for Texas crimes and offenders whose parole or mandatory supervision has been revoked who are not in the actual physical custody of the Texas Department of Criminal Justice (TDCJ) Correctional Institutions Division are subject to the parole review process as set out in this chapter and title in accord with the following.

(1) Parole in absentia processing is initiated by the assigned Correctional Institutions Division staff upon referral from the county of conviction when all necessary pen packet documents have been compiled and presented to the Correctional Institutions Division.

(2) Prior to consideration for parole by the parole panel, the offender may be interviewed by a representative of the Correctional Institutions Division for the purpose of obtaining a parole release plan and completion of a parole in absentia summary in order that the parole panel may make an informed decision concerning parole release suitability (§145.12 of this title, relating to Action upon Review; §145.16 of this title, relating to Action upon Special Review [~~of Information Not Previously Available~~]; Release Approved; and §145.17 of this title, re-

lating to Action upon Special Review [of Information Not Previously Available]--Release Denied).

(3) An offender released to parole in absentia or mandatory supervision on a Texas felony sentence shall, after release, be treated the same as an offender released on parole or mandatory supervision directly from the TDCJ Correctional Institutions Division. Such offenders are subject to revocation for violation of the terms and conditions of their release pursuant to the provisions and procedures of Chapter 146 of this title (relating to Revocation of Parole or Mandatory Supervision[; §§146.3 - 146.10]).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602933

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 406-5388



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

The Texas Workforce Commission (Commission) proposes the following amendments to Chapter 801 relating to Local Workforce Development Boards:

Subchapter A, General Provisions, §§801.1, 801.2, 801.11, 801.16, and 801.17

Subchapter B, One-Stop Service Delivery Network, §§801.21, 801.22, 801.23, 801.24, 801.25, 801.27, 801.28, 801.29

Subchapter C, The Integrity of the Texas Workforce System, §801.51

The Commission proposes the following new section to Chapter 801 relating to Local Workforce Development Boards:

Subchapter B, One-Stop Service Delivery Network, §801.31

The Commission proposes the following repeal to Chapter 801 relating to Local Workforce Development Boards:

Subchapter B, One-Stop Service Delivery Network, §801.26

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 801 rules change is to implement:

- House Bill (HB) 720, enacted by the 79th Texas Legislature, Regular Session (2005), which directs that Local Workforce Development Boards (Boards) include one member who is a veteran and serves the interests of veterans;

- HB 2604, enacted by the 79th Texas Legislature, Regular Session (2005), which directs that veterans receive preference--i.e., priority of service--for state-funded training or assistance under a job training or employment assistance program or service;

- SB 6, enacted by the 79th Texas Legislature, Regular Session (2005), which directs that workforce services be prioritized and targeted to meet the needs of current foster youth and former foster youth and that Boards and the Texas Department of Family and Protective Services (DFPS) jointly develop and adopt a memorandum of understanding; and

- Texas Open Meetings Act (Texas Government Code, Chapter 551) requirements as they apply to business conducted by the Boards in their capacity as governmental entities.

Additionally, 38 U.S.C. §4215 provides federal priority of service for U.S. Department of Labor (DOL) funded employment, training, and placement programs for federal qualified veterans and qualified spouses. The proposed amendment to Chapter 801 distinguishes between state qualified veterans eligible for a preference in state-funded services and federal qualified veterans and qualified spouses eligible for preference in DOL-funded programs.

House Bill 720

Texas Government Code §2308.256(h) requires that at least one member of a Board, who qualifies under one of the existing membership categories, also be a veteran. Additionally, Texas Government Code §2308.251(2) specifies that veteran candidates for Board membership must have served in the federal armed forces, United States public health services, state military forces, or an auxiliary service of one of the branches of the armed forces, and possess an honorable discharge. Section 801.1(g)(2)(C)(vii) of this chapter requires that a veteran serve concurrently as a representative of veterans and in a membership category for which he or she qualifies.

HB 720 amends Texas Government Code §2308.256 to strengthen this provision by directing that the Board member who is a veteran also represents the interests of veterans in the local workforce development area in addition to the interests of the membership category for which the veteran was appointed. In clarifying and defining an existing Board member role filled by a veteran and the interests that member represents, HB 720 does not require a new membership category.

House Bill 2604

HB 2604 amends Chapter 302 of the Texas Labor Code and directs that qualified veterans, as identified in Texas Government Code §657.002(a), receive preference--i.e., priority of service--for training or assistance under a job training or employment assistance program or service. This requirement applies to services funded in whole or in part by state funds.

Senate Bill 6

SB 6 amends Chapter 264 of the Texas Family Code and directs DFPS to address the unique challenges facing foster youth who are in the conservatorship of DFPS and must transition to independent living.

The statute requires Boards and DFPS to jointly develop and adopt a memorandum of understanding. The memorandum of understanding will ensure that eligible foster youth are given access to the workforce system to help meet their employment, education, and training needs, and will promote collaborations and referrals to the Texas Workforce Centers in order to further the objectives of the Preparation for Adult Living (PAL) program.

DFPS is the agency responsible for administering and overseeing the federal Chafee Foster Care Independence Program (Chafee). In Texas, the independent program that receives Chafee funding is the PAL program. The goals or objectives of the PAL program include:

- helping foster youth to transition to self-sufficiency;
- helping foster youth receive the education, training, and services necessary to obtain employment;
- helping foster youth prepare for postsecondary training and educational institutions;
- providing personal and emotional support to foster youth through mentors and the promotion of interactions with dedicated adults;
- providing financial, housing, counseling, employment, education, and other appropriate support services to former foster youth between the ages of 18 and 21; and
- providing vouchers for education and training, including post-secondary education, to youth who have aged out of foster care.

SB 6 also charges that the Commission and Boards must ensure that workforce services are prioritized and targeted for youth transitioning out of the foster care system and for former foster youth. Further, where feasible, Boards must refer foster youth who need housing for short-term housing stays.

In addition to 38 U.S.C. §4215, which establishes federal priority of service for federal qualified veterans and qualified spouses in DOL-funded programs, there are two federal statutes that define veterans for DOL-funded programs--38 U.S.C. §4211 and 29 U.S.C. §2801(49). These two federal statutes define veterans differently. To simplify identification of veterans and ensure consistent application of federal priority of service, the Commission has requested a waiver under the Workforce Investment Act (WIA) (29 U.S.C. §2939) of the definition of veteran (29 U.S.C. §2801(49)) used for WIA services, to conform with the definition of veteran in 38 U.S.C. §4211.

To reinforce the federal priority of service provisions (38 U.S.C. §4215) and to implement the state priority of service provisions, federal qualified veterans and qualified spouses, state qualified veterans, and eligible foster youth first must be identified at the initial point of contact and then notified of their entitlement to a priority for workforce services. These individuals will be given priority over all other equally qualified individuals in the receipt of employment assistance or job training services.

For state-funded workforce services, if a state qualified veteran and an eligible foster youth concurrently apply for workforce services, or if a waiting list exists, the state qualified veteran must be served before the eligible foster youth.

Furthermore, for DOL-funded workforce services, if a federal qualified veteran or qualified spouse, state qualified veteran, and eligible foster youth concurrently apply for workforce services, or if a waiting list exists, the federal qualified veteran or qualified

spouse must be served before the state qualified veteran or the eligible foster youth.

Texas Open Meetings Act

The Texas Open Meetings Act directs all governmental bodies, including Boards, to adopt policies in an open public meeting that has been properly posted and convened.

All Board directives that impact the rights, benefits, and privileges of employers, individuals, other customers, or organizations are official governmental policies, must be voted on, and adopted as Board policy in an open meeting. Board policy making involves developing and adopting directives as local guidelines that implement, interpret, or prescribe laws, regulations, and state policies.

Board policy making also occurs when a Board chooses to make changes to long-standing administrative procedures in a manner that is significant enough to impact the rights, property, or privileges of individuals or groups of individuals.

While the Commission has offered guidance to Boards on implementation of the Texas Open Meetings Act, currently only the Commission's Child Care and Development rules specifically reference the open meetings requirement, stating that Boards must adopt child care policies in compliance with the Texas Open Meetings Act. Because the Texas Open Meetings Act applies to all Board policies, the proposed amendment to Chapter 801 sets out the requirements.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes have been made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§801.1. Requirements for Formation of Local Workforce Development Boards

Section 801.1(g)(2)(A)(ii)(VI) is modified to improve clarity.

Section 801.1(g)(2)(A)(ii)(VII) updates the name of the Texas Council on Workforce and Economic Competitiveness to the Texas Workforce Investment Council.

Section 801.1(g)(2)(C) is reorganized. Section 801.1(g)(2)(C)(vii)(II) and §801.1(g)(2)(C)(vii)(III) are added to require that an existing Board member, who qualifies as a veteran, be actively engaged in veterans' affairs or services and maintain a policy or decision-making role as a voting member or officer in a veterans' organization or association.

Section 801.1(g)(2)(D)(ii) is added to state that an existing Board member, who qualifies as a veteran, can represent local veterans' interests as well as the membership category for which he or she was appointed, if the Board member has a policy or decision-making role as a voting member or officer in a veterans' organization or association.

§801.11. Board Member Nomination and Appointment

New §801.11(d) has been added to clarify that Board membership categories must be maintained, as set forth in §801.1(g)(2)(C).

§801.16. Agreement for Local Procedures

Section 801.16(a) is modified to correctly cite §801.1(g)(2)(A)(i)(I) - (VI).

§801.17. Board Training and Services Plans, Modifications, and Amendments

Section 801.17(b) is reorganized to improve clarity.

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

The Commission proposes the following amendments to Subchapter B:

§801.23. Definitions

Section 801.23(1) states that Certified Full-Service Texas Workforce Centers aid both employers and job seekers.

Section 801.23(2) states that Certified Texas Workforce Centers aid both employers and job seekers.

Section 801.23(3), the definition of One-Stop Innovation Plan, is deleted because it no longer applies to the current Incentive Awards contained in Chapter 800, Subchapter D.

New §801.23(3) defines "competent" as it applies to state qualified veterans. A state qualified veteran must be eligible for both the program and the specific employment or training service for which the veteran is applying.

New §801.23(4) defines "federal qualified veteran or qualified spouse" for the purpose of implementing federal priority of service as set forth in 38 U.S.C. §4215. A federal qualified veteran is further defined under the Workforce Investment Act (29 U.S.C. §2801(49)) or any relevant waivers, or in 38 U.S.C. §4211, and qualified spouse is defined in 38 U.S.C. §4215(a)(1)(B).

Section 801.23(4), the definition of One-Stop Service Delivery Network, is deleted because it is defined in Chapter 800.2 of this title; therefore, it is unnecessary to redefine the term in this chapter.

New §801.23(5) defines an "eligible foster youth" as:

- a "current foster youth," defined as a youth, age 14 or older, who is receiving substitute care services under the managing conservatorship of DFPS, including youth residing in private foster homes, group homes, residential treatment centers, juvenile correctional institutions, and relative care; or
- a "former foster youth," defined as a youth, not more than 23 years of age, who formerly was under the managing conservatorship of DFPS until:
- a court transferred conservatorship;
- the youth was legally emancipated (i.e., the youth's minority status was removed by a court); or
- the youth attained 18 years of age.

Section 801.23(5), the definition of "Texas Workforce Center Partner," is deleted because it is defined in Chapter 800.2 of this title; therefore, it is unnecessary to redefine the term in this chapter.

New §801.23(6) defines the term "national emergency," referenced in Texas Government Code §657.002(a), to establish criteria for a qualified veteran. A national emergency declared in accordance with federal law is an emergency declared by the President pursuant to 50 U.S.C. §1621. Because historical data (Congressional Research Service Report for Congress on the National Emergency Powers, February 10, 2006) shows that the

nation has been under one or more declared states of national emergency at all times since 1933--a trend that is expected to continue--it is likely that most veterans will meet this criteria to be considered a qualified veteran for purposes of establishing priority of service.

New §801.23(7) defines "state qualified veteran," as set forth in Texas Government Code §657.002(a) and as directed by HB 2604.

§801.25. Texas Workforce Center Standards

Section 801.25(a)(1) states that in addition to employers and students, Certified Texas Workforce Centers shall be available to job seekers.

Section 801.25(a)(2) includes "referring qualified job seekers to employer job postings" as an example of employment services.

Section 801.25(a)(4) clarifies that services are tailored to meet the needs of "employers and job seekers."

Section 801.25(a)(5) replaces Adult Basic Education with Basic Education Skills as a developmental service that is not provided at a Certified Texas Workforce Center.

Section 801.25(a)(7) states that a "flexible and market-driven process" shall be implemented. This modification is made to recognize that the Texas workforce system has evolved from a customer-driven to a market-driven system.

Section 801.25(a)(8) removes references to "kiosk" and "wide area network (WAN)" because they are obsolete for purposes of this paragraph.

Section 801.25(a)(9) adds that staff have experience and knowledge of required services provided for "employers," as well as job seekers.

Section 801.25(a)(10) deletes "customer-driven" because it is not necessary.

Section 801.25(a)(11) is modified for improved clarity.

Section 801.25(a)(13) is modified for better clarity.

Section 801.25(a)(14) adds WorkInTexas.com as a service to be maintained in a user-friendly resource center.

Section 801.25(a)(15) sets out the program services to be administered by Certified Texas Workforce Centers.

New §801.25(a)(16) sets out the program services to be provided by Certified Texas Workforce Centers.

New §801.25(a)(19) requires that Certified Texas Workforce Centers ensure that federal qualified veterans and qualified spouses, and state qualified veterans, receive priority in the receipt of services, as set forth in §801.31.

New §801.25(a)(20) requires that Certified Texas Workforce Centers ensure that eligible foster youth receive priority in the receipt of services, as set forth in §801.31.

New §801.25(a)(21) requires that Certified Texas Workforce Centers comply with the provisions of the memorandum of understanding between the Board and DFPS to further the objectives of the PAL program, as required by Texas Family Code §264.121.

Certain paragraphs in §801.25 have been renumbered to accommodate additions or deletions.

§801.26. One-Stop Innovation Plan

Section 801.26 is repealed because the One-Stop Innovation Plan is no longer required.

§801.27. Texas Workforce Center Partners

Section 801.27(b)(5) is removed because the Welfare-to-Work program has ended.

Section 801.27(c)(1) removes obsolete references to the "Texas Rehabilitation Commission" and the "Texas Commission for the Blind" and replaces both with the reference to the "Texas Department of Assistive and Rehabilitative Services."

Certain paragraphs in §801.27 have been renumbered to accommodate additions or deletions.

§801.28. Services Available Through the One-Stop Service Delivery Network

Section 801.28(a) is clarified by adding that Certified Texas Workforce Centers must provide "access to" core services.

Section 801.28(a)(2) specifies that intake may include "reemployment services."

Section 801.28(a)(11) removes the reference to "Welfare to Work activities" because the Welfare-to-Work program has ended.

Section 801.28(b)(1) removes the reference to adults and dislocated workers and identifies "job seekers" as individuals who may receive comprehensive and specialized assessments of their skill levels and service needs.

Section 801.28(c)(8) clarifies that training may include "referrals to Adult Basic Education" and literacy activities.

The text of §801.28(d)(1) is incorporated into §801.28(d).

Sections 801.28(d)(2) and 801.28(d)(3) are deleted because this information is set out in §801.27.

§801.31. Priority for Workforce Services

New §801.31, Priority for Workforce Services, is added to implement the provisions of HB 2604 and SB 6 requiring state qualified veterans to receive priority for state-funded employment assistance and training services, and eligible foster youth to receive priority for federal and state-funded services. To ensure that state qualified veterans and eligible foster youth receive priority over all other equally qualified individuals, they must be identified at the initial point of contact and then notified of their entitlement to a priority for services. Individuals may identify themselves at the initial point of contact or, in the case of eligible foster youth, DFPS staff may make a referral for workforce services.

In addition to the priority of service directed by HB 2604 for state-funded employment assistance or job training services, Boards must continue, in accordance with 38 U.S.C. §4215, providing federal priority of service for federal qualified veterans and qualified spouses in the receipt of services funded in whole or in part by DOL. As previously stated, there are currently two federal definitions for veterans for DOL-funded programs. The Commission has requested a waiver of the WIA federal definition to align these definitions.

SUBCHAPTER C. THE INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

The Commission proposes the following amendments to Subchapter C:

§801.51. Purpose and General Provisions

The dates in §801.51(d) and §801.51(e)(4) are deleted because they are no longer relevant.

New §801.51(f) adds the requirements of the Texas Open Meetings Act with regard to Boards conducting business and making policy decisions in open meetings, posting appropriate notice of open meetings for the public, and preparing and retaining minutes for each open meeting.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no estimated additional costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There will be no probable economic costs to persons required to comply with this rule, and there will be no adverse economic effect on small businesses.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Luis M. Macias, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure compliance with federal and state requirements for priority of service for federal qualified veterans and qualified spouses, state qualified veterans, and eligible foster youth and to assist Boards with meeting those requirements; representation of veterans on the Boards; and that all Board directives impacting the rights, benefits, and privileges of employers, customers, and organizations are official governmental policies, and are voted on and adopted as Board policy in an open meeting.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of each of Texas' 28 Boards. The Commission provided the policy concepts regarding this rule amendment to the Boards for consideration and review. During the rulemaking process, the Commission considered all information gathered in order to develop a rule that provides clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30

days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§801.1, 801.2, 801.11, 801.16, 801.17

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed amendments affect Title 4, Texas Labor Code, particularly Chapters 301 and 302; Texas Family Code, Chapter 264; and Texas Government Code, Chapter 551 and Chapter 2308.

§801.1. *Requirements for Formation of Local Workforce Development Boards.*

(a) Purpose of Rule.

(1) Upon application by the chief elected officials (CEOs) and approval of the Commission, the Commission shall ~~will~~ forward an application to form a Local Workforce Development Board ~~local workforce development board~~ (Board) to the Governor.

(2) Before an application may be submitted to the Governor, all requirements of this section shall ~~must~~ be met.

(b) State Law. The formation of Boards is governed by the Workforce and Economic Competitiveness Act, Texas Government Code, Chapter 2308.

(c) Chief Elected Official Agreement. Creation of a Board requires agreement by at least three-fourths of the CEOs in the local workforce development area (workforce area) who represent units of general local government, including all of the CEOs who represent units of general local government having populations of at least 200,000. The elected officials agreeing to the creation of the Board shall ~~must~~ represent at least 75% of the population of the workforce area.

(d) Chief Elected Officials. The CEOs may, and are encouraged to, consult with local officials other than the ones delineated below. The following officials are designated as the CEOs for the purpose of establishing agreements to form Boards:

(1) Mayors.

(A) The mayor of each city with a population of at least 100,000;

(B) or, if there is no city with a population of greater than 100,000, the mayor of each city with a population greater than 50,000;

(C) or, if there are no cities with a population of greater than 50,000, the mayor of the largest city in the workforce area.

(D) For purposes of this section, municipal population will be determined by the figure last reported by the Texas State Data Center at the time of submission of the application to the Commission.

(2) All county judges included in a workforce area as designated by the Governor.

(e) Time of Application. CEOs in a workforce ~~an~~ area may not establish a Board until the Governor has designated that area as a workforce area as provided in the Workforce and Economic Competitiveness Act, Texas Government Code, Chapter 2308.

(f) Applications shall ~~must~~ meet all Governor-approved criteria for the establishment of Boards.

(g) Procedures for Formation of a Board. The CEOs shall ~~must~~ comply with the following procedures to form a Board.

(1) Public process procedure. If three-fourths of the CEOs, as defined in subsection (d) of this section, agree to initiate procedures to establish a Board, they shall ~~must~~ conduct a public process, including at least one public meeting, to consider the views of all affected organizations before making a final decision to form a Board. This public process may include, but is not limited to, notices published in various media and surveys for public comment.

(2) Application procedure.

(A) The CEOs shall ~~must~~ submit an application to the Commission. This application shall ~~must~~ include evidence of the actions required by paragraph (1) of this subsection. As a part of the application, each of the CEOs, who is in agreement regarding the formation of a Board, shall ~~must~~ execute the following documents:

(i) An ~~an~~ interlocal agreement delineating:

(I) The ~~the~~ purpose of the agreement;

(II) The ~~the~~ process that will be used to select the CEO who will act on behalf of the other CEOs and the name of such CEO if the person has been selected;

(III) The ~~the~~ procedure that will be followed to keep those CEOs informed regarding Board ~~local workforce development~~ activities;

(IV) The ~~the~~ initial size of the Board;

(V) How ~~how~~ resources allocated to the workforce area will be shared among the parties to the agreement;

(VI) The ~~the~~ process to be used to appoint the Board members, which shall ~~must~~ be consistent with applicable federal and state laws; and

(VII) The ~~the~~ terms of office of the members of the Board.

(ii) An ~~an~~ acknowledgment in the following form: We, the chief elected officials of the _____ Workforce Development Area, acknowledge that the following are responsibilities and requirements pursuant to the formation of the Board ~~local workforce development boards (Boards)~~:

(I) The Board will assume the responsibilities for the following committees and councils that will be replaced by the Board unless otherwise provided in Texas Government Code, Chapter 2308: private industry council, quality workforce planning committee, job service employer committee, and local general vocational program advisory committee;[-]

(II) At least one Texas Workforce Center ~~career development center~~ ~~must~~ be established within 180 days of Board certification;

(III) The Board shall ~~must~~ have its own independent staff and not be a provider of workforce services, unless the Board secures a waiver of these provisions;

(IV) The CEOs ~~shall~~ ~~chief elected officials~~ ~~must~~ enter into a partnership agreement with the Board to designate a grant recipient to receive, ~~and~~ be accountable for ~~block grant funds~~, and be liable for any misuse of block grant funds;

(V) The partnership agreement shall ~~[must]~~ also specify the entity that will administer the programs, which may be separate from the entity that receives the funds from the state;

(VI) The partnership agreement shall ~~[must]~~ define the process through which the Boards and CEOs ~~[chief elected officials]~~ will develop the strategic and operational plans, including the training plan required under the Workforce Investment Act (WIA); ~~required by the legislation in order to receive block grant funds~~; and

(VII) The strategic plan shall ~~[must]~~ be reviewed by both the Commission and the Texas Workforce Investment Council (TWIC) ~~[Council on Workforce and Economic Competitiveness]~~, and approved by the Governor before block grants will be available to the workforce area.

(B) The application shall ~~[must]~~ include evidence that any affected existing Board has been notified and agrees that its functions and responsibilities will be assumed by the proposed Board upon the proposed Board's final certification by the Governor.

(C) The application shall include the names and affiliations of individuals recommended for Board membership, with documentation that CEOs followed the nomination process specified in applicable state and federal law, including Texas Government Code §2308.255 and §2308.256.

(i) Private sector members shall be owners of business concerns, chief executives, chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility. To be eligible to represent the private sector, at least 51% of an individual's annual income shall ~~[must]~~ be from private sector sources.

(ii) Private sector membership should represent the composition of the local pool of employers. The private sector membership should include representatives of the region's larger employers and emerging growth industries. Primary consideration should be given to private sector employers who do not directly provide employment and workforce training services to the general public. CEOs shall ~~[must]~~ develop a profile of the workforce area's major industries using locally obtained information and state-published ~~[state published]~~ data. The Agency ~~[Commission will]~~ provide relevant labor market information, including data that identifies ~~[which identify]~~ employment trends, emerging high-growth, high-demand ~~[and growth]~~ industries, the size of local employers, and other data needed to assist CEOs in developing the employer profile. Documentation submitted with the application shall ~~[must]~~ show how the regional employer profile is reflected in the Board membership.

(iii) Board membership shall ~~[must]~~ include representatives of local organized labor organizations, community-based organizations, educational agencies, vocational rehabilitation agencies, public assistance agencies, economic development agencies, the public employment service, local literacy councils, and adult basic and continuing education organizations as required by law.

(iv) Representatives of local organized labor organizations shall be nominated by local labor federations unless no employees in the workforce area are represented by such organizations, in which case nominations may be made by other representatives of employees. A labor federation is defined as an alliance of two or more organized labor unions for the purpose of mutual support and action.

(v) Board nominees shall be actively engaged in the organization, enterprise, or field that ~~[which]~~ they are nominated to represent. ~~[A] Board nominees~~ ~~[nominee]~~ shall have an existing relationship with the workforce area through residence or employment within the workforce area.

(vi) At least one of the members of a Board appointed under Texas Government Code §2308.256(a) shall ~~[must]~~, in addition to the qualifications required for the members under that subsection, have expertise in child care or early childhood education.

(vii) At least one of the members of a Board appointed under Texas Government Code §2308.256(a) shall ~~[must]~~, in addition to the qualifications required for the members under that subsection; ~~be a veteran as defined in Texas Government Code §2308.251(2);~~

(I) be a veteran as defined in Texas Government Code §2308.251(2);

(II) be actively engaged in the field of veterans' affairs or services; and

(III) maintain a policy or decision-making role as a voting member or officer in a veterans' organization or veterans' association as evidence that the Board member understands the needs of the local veterans' population and will represent the interest and concerns of veterans.

(D) No individual member shall be a representative of more than one sector or category described in this section, except as statutorily permitted for one or more members having: ~~[expertise in child care or early childhood education in addition to meeting one of the other sector or categories of representation.]~~

(i) expertise in child care or early childhood education; or

(ii) the qualifications set forth in subsection (g)(2)(C)(vii) of this section.

(E) The application shall ~~[must]~~ include documentary evidence substantiating compliance with the application procedure, including but not limited to, written agreements, minutes of public meetings, copies of correspondence, and such other documentation as may be appropriate.

§801.2. Waivers.

(a) Purpose of Rule. Texas Government Code §2308.264 ~~[The Workforce and Economic Competitiveness Act, §§2308.264], §2308.267, and §2308.312 set~~; ~~Government Code, Vernon's Texas Codes Annotated, sets~~ forth prohibitions regarding service delivery, Board ~~[board]~~ staffing, and developmental services. Only under circumstances that fit the criteria specified in those statutes will requests for waivers be granted.

(b) Independent Service Delivery. A Board ~~[board]~~ is prohibited from directly providing workforce training and services, including operational functions normally associated with such services such as intake, eligibility determination, assessment, and referral, unless a waiver is obtained.

(c) Separate Staffing. Board ~~[The board's]~~ staff shall ~~[must]~~ be employed separately and independently of any person that provides workforce training and services, as described in subsection (b) of this section, unless the Board ~~[board]~~ arranges for independent evaluation of any other workforce services provided by the staffing organization and obtains a waiver.

(d) Developmental Services. A person who provides one-stop ~~["one-stop"]~~ services at a Texas Workforce ~~[Career Development]~~ Center shall ~~[may]~~ not also provide developmental services unless a waiver is obtained.

(e) Requesting a Waiver.

(1) Waiver requests ~~shall~~ ~~[should]~~ be submitted to the Commission and contain detailed justification as specified in the respective statutes. The Commission shall review and ~~[will]~~ forward a recommendation to TWIC ~~[the Texas Council on Workforce and Economic Competitiveness]~~ for consideration. TWIC will forward its recommendation to the Governor for approval ~~[a determination]~~.

(2) In recommending action on such requests, the Commission ~~shall~~ ~~[will]~~ apply only the criteria specified in the respective statutes.

(3) The Commission may require a Board ~~[board's]~~ to submit documentation as set forth ~~[outlined]~~ in ~~[the Texas Workforce Planning Guidelines and/or]~~ Workforce Development Letters to support its waiver request.

(f) Duration of Waiver.

(1) A waiver may be granted for a period less than, but not to exceed, the effective term of an approved plan and budget.

(2) A waiver may be conditioned upon the Board's ~~[board]~~ completion of steps ~~[measures]~~ taken to eliminate the need for a waiver.

§801.11. Board Member Nomination and Appointment.

(a) For each Board member nomination, the nominating organization shall submit to the CEOs of the workforce area a completed Board Nomination Slate in a form established by the Commission.

(b) Documentation in the form of a curriculum vitae, resume, or work history supporting the qualifications of the nomination ~~shall~~ ~~[must]~~ accompany the Board Nomination Slate.

(c) Once nominations are submitted to and appointments are made by the CEOs, the Board Appointments form, in a format established by the Commission, and documentation shall be submitted ~~[forwarded]~~ to the Agency's ~~[Director of the]~~ Workforce Development Division~~], Texas Workforce Commission]~~. Only nominations submitted ~~[forwarded]~~ by the CEOs may be accepted by the Commission. The documentation submitted by the CEOs ~~shall~~ ~~[must]~~ include the following:

(1) ~~[a]~~ Board Nomination Slate for each appointment; and

(2) ~~[a]~~ Board Appointments form, ~~[in a format determined by the Commission,]~~ indicating the official beginning and expiration dates of all appointments.

(d) Individuals shall be recommended for Board membership in accordance with §801.1(g)(2)(C) of this subchapter.

(e) ~~[(d)]~~ Board reappointments shall be processed under the provisions of this chapter.

§801.16. Agreement for Local Procedures.

(a) The CEOs in a workforce area shall enter into an Agreement for Local Procedures with the Board ~~[for the workforce area]~~ as required by Texas Government Code §2308.253(g) and by §801.1(g)(2)(A)(i)(I) - (VI) of this subchapter ~~[§801.1(g)(2)(A)(iii)(IV) - (VD)]~~.

(b) The Agreement for Local Procedures ~~shall~~ ~~[must]~~ be signed by the current CEOs and the Board Chair.

(c) Any amendment to an Agreement for Local Procedures, change to a Board's organizational plan or bylaws, or notice of an election of a new CEO or Board Chair ~~shall~~ ~~[must]~~ be submitted to the Agency ~~[Commission]~~ within 15 calendar days of the adoption of such amendment, change, or election.

(d) If a CEO or Board Chair is newly elected during the ~~then-current~~, ~~[then current]~~ two-year program planning cycle, such newly

elected individual ~~shall~~ ~~[must]~~ submit to the Agency a written statement acknowledging that ~~he or she~~ ~~[the newly elected official]~~:

(1) has read, understands, and will comply with the current Agreement for Local Procedures; and

(2) reserves the option to request negotiations to amend the Agreement for Local Procedures ~~[agreement]~~ at any time during the official's tenure as CEO or Board Chair.

(e) All Agreements for Local Procedures and Board organizational plans or bylaws shall state that Board members will not be permitted to delegate any Board duties to proxies or alternates.

§801.17. Board Training and Services Plans, Modifications, and Amendments.

(a) Purpose of Rule.

(1) All workforce training and services plans and budgets developed ~~by a Board~~ pursuant to state and federal law ~~[by a Board]~~ shall be submitted to the Agency's Workforce Development Division ~~[of the Texas Workforce Commission]~~ for review.

(2) Before a plan and budget ~~is~~ ~~[will be]~~ forwarded by the Commission to TWIC~~[the Texas Council on Workforce and Economic Competitiveness (TCWEC)]~~ for recommendation to the Governor for approval, all requirements of this section ~~shall~~ ~~[must]~~ be met.

(b) Standards for Submission. The Agency shall provide guidelines for strategic planning and budgeting to Boards. A local workforce training and services plan and budget ~~shall~~ ~~[will]~~ be reviewed according to criteria established by the Agency ~~[Commission]~~. ~~[The Texas Workforce Commission will provide guidelines for strategic planning and budgeting to Boards.]~~

(c) Plan Modification or Amendment. An approved plan and budget may be changed by either modification or amendment. Either method of change ~~shall~~ ~~[must]~~ be submitted to the Agency ~~[Commission]~~ for review before implementation.

(1) A modification is a substantial revision of a plan and budget. The Agency shall ~~[Commission will]~~ provide criteria to Boards that ~~[will]~~ define what constitutes a substantial revision. Each modification ~~shall~~ ~~[must]~~ provide evidence that a majority of the CEOs of a workforce area or their designee or designees with signatory authority have approved the modification.

(2) An amendment is a minor adjustment to a plan and budget. The Agency shall ~~[Commission will]~~ provide criteria to Boards that ~~[will]~~ define what constitutes a minor adjustment. An amendment does not require approval by a majority of the CEOs of a workforce area.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 24, 2006.

TRD-200602908

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Texas Workforce Commission

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 475-0829



SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

40 TAC §§801.21 - 801.25, 801.27 - 801.29, 801.31

The new and amended rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The new and amended rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302; Texas Family Code, Chapter 264; and Texas Government Code, Chapter 551 and Chapter 2308.

§801.21. Scope and Purpose.

(a) The purpose of this subchapter is to set forth the rules relating to the One-Stop Service Delivery Network as set forth in Texas Government Code, Chapter 2308; Texas Labor Code, Chapters 301 and 302; and Workforce Investment Act (WIA) §121 (29 U.S.C.A. §2841). It is the intent of the Commission, in partnership with Boards, to facilitate the development and maintenance of the One-Stop Service Delivery Network such that information and services responsive to their individual needs are available to all customers. The One-Stop Service Delivery Network shall be evaluated against the established levels of certification as well as any additional standards developed by the Commission to ensure the continuous improvement of the system.

(b) The rules contained in this subchapter [Subchapter B, relating to the One-Stop Delivery System,] shall apply, except that to the extent of any conflict, the provisions of Texas Government Code, Chapter 2803 and [Section] §801.2 and §801.54 of this chapter [Chapter 801, relating to Local Workforce Development Boards,] shall govern.

§801.22. Requirement to Maintain a One-Stop Service Delivery Network.

Each Board shall maintain a One-Stop Service Delivery Network, consistent with WIA, state law, and this subchapter. The One-Stop Service Delivery Network shall include at least one Certified Full-Service [Full Service] Texas Workforce Center providing the core services set forth [listed] in §801.28(a) of this subchapter.

§801.23. Definitions.

In addition to the definitions contained in §800.2 of this title, [Title, relating to Definitions,] the following words or terms; when used in Part XX of this Title, relating to the Texas Workforce Commission,] shall have the following meanings, unless the context clearly indicates otherwise.

(1) Certified Full-Service [Full Service] Texas Workforce Center--A local full-service [full service] workforce center that has integrated service functions to aid employers and job [service] seekers in all aspects of employment and training in a seamless, nonprogram-specific manner, and has been found to meet the requirements of a Full-Service [Full Service] Texas Workforce Center set out in §801.25(b) of this subchapter.

(2) Certified Texas Workforce Center--A local workforce center that provides integrated services to aid employers and job [service] seekers in all aspects of employment and training in a seamless nonprogram-specific manner, and has been found to meet the requirements of a Certified Texas Workforce Center set out in §801.25(a) of this subchapter.

(3) Competent--A federal or state qualified veteran who meets the eligibility requirements of the program from which he or she is seeking services, and is determined eligible for a specific employment and training service funded by that program.

(4) Federal Qualified Veteran or Qualified Spouse--For purposes of implementing priority of service for DOL-funded employment and training programs, the term "federal qualified veteran or qualified spouse" is defined as:

(A) A veteran as defined:

(i) under the Workforce Investment Act (29 U.S.C. §2801), or by any relevant waivers, as an individual who served in the active military, naval, or air service, and who was discharged or released from such service under conditions other than dishonorable;
or

(ii) in 38 U.S.C. §4211 as a person who:

(I) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge;

(II) was discharged or released from active duty because of a service-connected disability; or

(III) as a member of a reserve component under an order to active duty pursuant to 10 U.S.C. §12301(a), (d), or (g), §12302, or §12304, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge.

(B) The spouse of any of the following individuals:

(i) Any veteran who died of a service-connected disability.

(ii) Any member of the Armed Forces serving on active duty who, at the time of application for assistance under this section, is listed, pursuant to 37 U.S.C. §556 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than 90 days:

(I) Missing in action;

(II) Captured in line of duty by a hostile force; or

(III) Forcibly detained or interned in line of duty by a foreign government or power.

(iii) Any veteran who has a total disability resulting from a service-connected disability.

(iv) Any veteran who died while a disability so evaluated was in existence.

(5) Eligible Foster Youth--An eligible foster youth is a:

(A) Current Foster Youth--A youth, age 14 or older, who is receiving substitute care services under the managing conservatorship of the Texas Department of Family and Protective Services (DFPS). This includes youth residing in private foster homes, group homes, residential treatment centers, juvenile correctional institutions, and relative care; or

(B) Former Foster Youth--A youth up to 23 years of age, who formerly was under the managing conservatorship of DFPS, until:

(i) the conservatorship was transferred by a court;

(ii) the youth was legally emancipated (i.e., the youth's minority status was removed by a court); or

(iii) the youth attained 18 years of age.

(6) National Emergency--A condition declared by the President by virtue of powers previously vested in that office to authorize

certain emergency actions to be undertaken in the national interest pursuant to 50 U.S.C. §1621.

(7) State Qualified Veteran--An individual who meets the criteria of Texas Government Code §657.002(c) is entitled to a preference (i.e., priority) for training or assistance under a job training or employment assistance program or service funded in whole or in part by state funds if the individual:

(A) served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law or was discharged from military service for an established service-connected disability;

(B) was honorably discharged from military service;

(C) is competent as defined in paragraph (1) of this section.

(3) One-Stop Innovation Plan--A voluntary action plan describing improvements to the One-Stop Service Delivery Network in a Board area that may include: improvements in customer satisfaction; increased regional cooperation among Boards; enhanced performance on established local performance measures; and enhanced coordination of delivery of services with workforce center partners prepared in a format determined by the Commission; in cooperation with Boards; and in coordination with incentive rules contained in Chapter 800, Subchapter D (relating to Incentive Awards);

(4) One-Stop Service Delivery Network--A one-stop-based network under which entities responsible for administering separate workforce investment, educational and other human resources programs and funding streams collaborate to create a seamless network of service delivery that will enhance availability of services through the use of all available access and coordination methods, including telephonic and electronic methods;

(5) Texas Workforce Center Partner--an entity which carries out a workforce investment, educational or other human resources program or activity; and which participates in the operation of the One-Stop Service Delivery Network in a local workforce development area consistent with the terms of a memorandum of understanding entered into between the entity and the Board;

§801.24. *Texas Workforce Center Certification Levels.*

(a) All Texas Workforce Centers shall [must] meet the basic workforce center standards set out in §801.25(a) of this subchapter.

(b) In order to obtain certification as a Certified Full-Service [Full Service] Texas Workforce Center, a Texas Workforce Center shall [must] meet full-service [full service] standards set out in §801.25(a) and §801.25(b) of this subchapter [(b)].

(c) The Commission may establish additional levels of certification to ensure continuous development of the One-Stop Service Delivery Network.

§801.25. *Texas Workforce Center Standards.*

(a) Basic Workforce Center Standards. The Commission has established basic standards that shall [must] be met by all Texas Workforce Centers. Certified Texas Workforce Centers shall:

(1) be available to employers, job seekers, and students [and workers] throughout the [local] workforce [development] area;

(2) provide access to information and services, including employment services, such as referring qualified job seekers to employer job postings;

(3) address individual needs of customers by providing processes for basic or enhanced [the following three] methods of accessing services[: self-service, basic access, and full access];

(4) provide services [that are] tailored to meet the [individual] needs of employers and job seekers and include: job screening and referral, labor market information, a common intake and eligibility determination process, an independent assessment and service strategy, centralized and continuous case management and counseling, access to Individual Training Account (ITA) services for education and training needs, support [supportive] services (including access to subsidized child care), student loans, and other forms of financial assistance required to participate in and complete training;

(5) not provide developmental services, such as General Educational Development [(GED)], English as a Second Language [(ESL)], or [Adult] Basic Education Skills [(ABE)];

(6) provide each customer [person] with [written] information on local high-growth, high-demand [demand] occupations and industries, projected wage level upon completion of training programs, and performance of training providers when requested;

(7) implement a flexible and market-driven process for services [initial contact that is customer-driven and flexible];

(8) ensure access throughout the workforce [development] area by developing electronic methods for service delivery, such as the [kiosk,] Internet[, and wide area network (WAN)];

(9) ensure that staff is [are] experienced and knowledgeable in all required [programs and] services for employers and job seekers [and for employers];

(10) implement a tiered [customer-driven] service delivery strategy that includes self-directed[: information through individual self-] service, job search assistance in group settings, access to information on filing a claim for Unemployment Insurance [unemployment insurance] benefits, and specialized, enhanced [intensive] staff-assisted services;

(11) prepare and make available to customers understandable information packages [for customers] that briefly describe services[: locations; self-directed[: self-service] options[: job openings[: career exploration methods[: labor market information; high-growth, high-demand job information[: training and educational opportunities, and associated institutional performance [educational opportunities, and consumer] information[: and that also provide a mechanism for [customer] feedback on services provided;

(12) implement a timely and efficient referral and follow-up [follow up] process for employment-related services;

(13) provide independent assessments [assessment] of individual needs that include assessment of literacy levels for Choices customers [clients who have not recently received a literacy level assessment];

(14) maintain a user-friendly resource center that makes available computerized information systems with access to labor market information, demographics, occupations, [and] educational opportunities, and WorkInTexas.com, the statewide job matching system;

(15) administer [make available core] services, as set forth [defined] in §801.28(a), of the following programs: WIA Adults, Dislocated Workers, and Youth [Title I of WIA serving adults, dislocated workers and youth]; Food Stamp Employment and Training (FSE&T); Temporary Assistance for Needy Families (TANF) [TANF] Choices [activities]; access to subsidized child care services [Child Care Services]; Wagner-Peyser Employment Service (ES) [Services]; Trade

Adjustment Assistance (TAA); and ~~[veterans' employment and training programs; adult education; National Literacy Act services; non-certificate postsecondary career and technology training; Senior Texans Employment Program; Apprenticeship Program; National Community Services Act Program;]~~ Project Reintegration of Offenders (ProjectRIO) ~~[for ex-offenders; and access to unemployment insurance benefits]~~. Boards shall ensure that staff is ~~[be]~~ available to provide these ~~[the core]~~ services ~~[of these programs]~~ during all Texas Workforce Center operating hours;

(16) ~~provide access to services, as set forth in §801.28(a), of the following programs: veterans' employment and training; Adult Basic Education; National Literacy Act; noncertificate, postsecondary career and technology training; Senior Community Service Employment Program; Apprenticeship Training Program; National and Community Service Act; and Unemployment Insurance;~~

(17) ~~[(46)]~~ ensure availability through the Texas Workforce Centers of other services for the programs listed in paragraph ~~[subparagraph]~~ (15) of this section;

(18) ~~[(47)]~~ provide reasonable accommodation and accessibility in accordance with the Americans with Disabilities Act ~~[(ADA)]~~; ~~[and]~~

(19) ensure that federal qualified veterans and qualified spouses, and state qualified veterans receive priority as set forth in §801.31 of this subchapter;

(20) ensure that eligible foster youth receive priority as set forth in §801.31 of this subchapter;

(21) comply with the provisions of the memorandum of understanding between the Board and DFPS to further the objectives of the Preparation for Adult Living program, as required by Texas Family Code §264.121; and

(22) ~~[(48)]~~ meet each of the requirements for Certified Full-Service ~~[Full Service]~~ Texas Workforce Centers within twelve months of certification as a Texas Workforce Center.

(b) Full-Service~~[Full Service]~~ Standards. The Commission has established specific standards for a Texas Workforce Center to receive full-service~~[full service]~~ certification. A Certified Full-Service~~[Full Service]~~ Texas Workforce Center shall meet each of the following requirements within twelve months of certification as a Texas Workforce Center. Certified Full-Service~~[Full Service]~~ Texas Workforce Centers shall:

(1) design a customer-friendly waiting area and implement written procedures that define the steps ~~[measures]~~ taken to minimize customer wait time in the reception area and in other areas of the Texas Workforce Center;

(2) develop written procedures for following up on referrals to determine customer receipt of services, appropriateness of the referral to address the customer's needs, and the extent of customer satisfaction with the referral process and service received;

(3) provide customer access to WorkInTexas.com; ~~[the statewide job matching system;]~~ resume preparation tools, including software;~~;~~ and the Internet;

(4) provide consumer information on the quality of education and training providers and include a mechanism for customer feedback on personal experience with such providers;

(5) develop and display a menu of services with a corresponding fee schedule for services available at the Certified Full-Service ~~[Full Service]~~ Texas Workforce Center;

(6) demonstrate~~[-]~~ on-site management of all personnel, a plan for cross-training staff in all services, minimal programmatic specialization of staff, nonduplication ~~[non-duplication]~~ of efforts, removal of redundancies within program activities, and maximum flexibility to optimize utilization of resources;

(7) provide basic labor exchange services, including access to job orders for applicants, access to applicants for employers, and screening and referral methods for matching appropriate applicants and job orders; and

(8) provide centralized case management activities for specialized populations, such as the welfare, veterans, dislocated workers, and disabled populations.

§801.27. *Texas Workforce Center Partners.*

(a) Each Board shall maintain one or more memorandum ~~[memoranda]~~ of understanding that sets ~~[set]~~ out the obligations of the Board and each partner in the operation of the One-Stop Service Delivery Network in the ~~[local]~~ workforce ~~[development]~~ area. Each Board shall obtain a general authorization from the CEOs for actions taken under this subsection.

(b) Subject to the limitations ~~[as]~~ referenced in §801.29 of this subchapter ~~[Chapter]~~, relating to Limitations on Delivery of Services, the required Texas Workforce Center Partners are the entities that administer the following services in the ~~[local]~~ workforce areas ~~[development area]~~:

(1) ~~[services authorized under Title I of]~~ WIA Adults, Dislocated Workers, and Youth~~[for adults, dislocated workers and youths]~~;

(2) FSE&T~~[Food Stamp Employment and Training services]~~;

(3) TANF ~~[Temporary Assistance for Needy Families -]~~ Choices ~~[services]~~;

(4) subsidized child care ~~[services]~~;

~~[(5)]~~ Welfare-to-Work block grant services;

(5) ~~[(6)]~~ Wagner-Peyser ES~~[employment services]~~;

(6) ~~[(7)]~~ TAA~~[Trade Adjustment Assistance and NAFTA/TAA services]~~;

(7) ~~[(8)]~~ veterans' employment and training ~~[services]~~;

(8) ~~[(9)]~~ Adult Basic Education ~~[adult education activities]~~;

(9) ~~[(40)]~~ National Literacy Act ~~[services]~~;

(10) ~~[(41)]~~ noncertificate, ~~[non-certificate]~~ postsecondary career and technology training;

(11) ~~[(42)]~~ Senior Community Service Employment Program ~~[Senior Texans Employment Program (STEP) services]~~;

(12) ~~[(43)]~~ Apprenticeship Training Program~~[apprenticeship training]~~;

(13) ~~[(44)]~~ National and Community Service ~~[Services]~~ Act;

(14) ~~[(45)]~~ Project RIO ~~[services for ex-offenders]~~; and

(15) ~~[(46)]~~ Unemployment Insurance.

(c) Other entities that provide services of benefit to workforce development, including federal, state, and local programs as well as programs in the private sector, may be voluntary partners in the One-Stop Service Delivery Network if the Board and CEOs~~[chief elected official(s)]~~ agree on each ~~[the]~~ entity's participation. The ~~[These]~~ entities include, but are not limited to, those that provide:

(1) vocational rehabilitation ~~[program]~~ services (for example, the Texas Department of Assistive and Rehabilitative Services ~~[Texas Rehabilitation Commission, Texas Commission for the Blind]~~);

(2) Migrant and Seasonal Farmworker ~~[migrant and seasonal farmworker]~~ employment services;

(3) secondary and postsecondary vocational education and training activities;

(4) community services block grant programs;

(5) employment and training services provided through grantees of the U. S. Department of Housing and Urban Development;

(6) Job Corps services for youth; and

(7) Native American programs.

§801.28. Services Available Through the One-Stop Service Delivery Network.

(a) Core Services. All Certified Texas Workforce Centers shall provide access to core services, as defined in WIA §134(d)(2) (29 U.S.C.A. §2864(d)(2)) and Texas Government Code, Chapter 2308, including:

(1) outreach;

(2) intake, which may include reemployment services ~~[worker profiling]~~, and orientation to the information and services available through the One-Stop Service Delivery Network;

(3) determinations of individuals' eligibility ~~[whether the individuals are eligible]~~ for programs funded through the Commission that are available through the One-Stop Service Delivery Network;

(4) initial assessment of skill levels, aptitudes, abilities, and support ~~[supportive]~~ service needs;

(5) job search and placement assistance and, where appropriate, career counseling;

(6) provision of performance information and program cost information on eligible providers of training services as described in §§841.31 - 841.47 ~~[§§841.31- 841.47]~~ of this title ~~[chapter]~~ (relating to Training Provider Certification), provided by program, and eligible providers of youth activities described in WIA §123 (29 U.S.C.A. §2843), providers of adult education described in Title II of WIA, providers of postsecondary vocational education activities and vocational education activities available to school dropouts under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C.A. §2301 et seq.), and providers of vocational rehabilitation program activities described in Title I of the Rehabilitation Act of 1973 (29 U.S.C.A. §720 et seq.);

(7) provision of information regarding how the workforce ~~[local]~~ area is performing on the local performance measures and any additional performance information with respect to the One-Stop Service Delivery Network in the workforce ~~[local]~~ area;

(8) provision of information regarding filing claims for Unemployment Insurance ~~[unemployment compensation]~~;

(9) provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including job vacancy listings in such labor market areas, information on job skills necessary to obtain the jobs listed, and information related to local high-growth, high-demand jobs ~~[occupations in demand]~~ and the earnings and skill requirements for such jobs ~~[occupations]~~;

(10) provision of accurate information relating to the availability of support ~~[supportive]~~ services, including child care and trans-

portation, available in the local ~~[workforce]~~ development ~~[development]~~ area, and referral to such services, as appropriate;

(11) assistance in establishing eligibility for [Welfare-to-Work activities,] Choices, FSE&T [Food Stamp Employment and Training], and programs of financial aid assistance for training and education that are available in the workforce ~~[local]~~ area; and

(12) follow-up ~~[follow up]~~ services, including counseling regarding the workplace ~~[work place]~~, for youth participants in WIA [workforce investment] activities authorized under Chapter 841 of this title ~~[Title]~~, relating to WIA [Workforce Investment Act], who are placed in unsubsidized employment, for not less than 12 months after the first day of the employment, as appropriate.

(b) Intensive Services. A One-Stop Service Delivery Network shall provide access to services as described in the Texas Government Code, Chapter 2308, and intensive services as described in [the] WIA §134(d)(3) (29 U.S.C.A. §2864(d)(3)), which may include the following:

(1) comprehensive and specialized assessments of the skill levels and service needs of job seekers ~~[adults and dislocated workers]~~, such as diagnostic testing and use of other assessment tools, in-depth interviewing, and evaluation to identify employment barriers and employment goals;

(2) development of an Individual Employment Plan ~~[individual employment plan]~~ and service strategy to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve employment goals and objectives;

(3) group counseling;

(4) individual counseling and career planning;

(5) centralized and continuous case management; and

(6) short-term prevocational services, including learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for unsubsidized employment or training.

(c) Training Services. A One-Stop Service Delivery Network shall provide access to training services as described in WIA §134(d)(4) (29 U.S.C.A. §2864(d)(4)), and [the] Texas Government Code, Chapter 2308. Training services may include the following:

(1) high-growth, high-demand industry ~~[occupational]~~ skills training, including training for nontraditional employment;

(2) on-the-job training;

(3) programs that combine workplace ~~[work place]~~ training with related instruction;

(4) training programs operated by the private sector;

(5) skills upgrading and retraining;

(6) entrepreneurial training;

(7) job readiness training;

(8) referrals to Adult Basic Education ~~[adult education]~~ and literacy activities in combination with services with activities described in paragraphs (1) - (7) [(1) - (7)] of this subsection ~~[section]~~; and

(9) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of training.

(d) Other Services and Activities. A One-Stop Service Delivery Network shall offer access to all other permissible local employment and training activities included in the local workforce development plan, which may include discretionary one-stop activities, support services, and needs-related payments as set forth in WIA §134(e). [;]

[(1) all other permissible local employment and training activities included in the local workforce development plan, which may include discretionary one-stop activities, supportive services, and needs-related payments as outlined in WIA §134(e) (29 U.S.C.A. §2864(e));]

[(2) all programs and activities administered by the Texas Workforce Center Partners; and]

[(3) the information described in Wagner-Peyser Act, §15, and all job search, placement, recruitment and other labor exchange services authorized under the Wagner-Peyser Act (29 U.S.C.A. 49 et seq.);]

§801.29. Limitations on Delivery of Services.

Delivery of services under §801.28 of this title [Title], relating to Services Available Through the One-Stop Service Delivery Network, is subject to state law requirements on Board organization and service delivery structure as found in Texas Government Code, Chapter 2308, and this chapter [Chapter 801 of this Title, relating to Local Workforce Development Boards], as well as eligibility requirements and limitations of individual programs.

§801.31. Priority for Workforce Services.

(a) Boards shall ensure that federal qualified veterans and qualified spouses, state qualified veterans, and eligible foster youth who are entitled to receive priority over all other equally qualified individuals in the receipt of workforce services are:

(1) determined eligible for priority at the initial point of contact; and

(2) notified of their entitlement to a priority.

(b) Boards shall ensure that state qualified veterans receive priority over all other equally qualified individuals in the receipt of training or assistance under employment assistance or job training services funded in whole or in part by state funds in accordance with Texas Government Code §657.002(a).

(c) Boards shall ensure that federal qualified veterans and qualified spouses, as defined in §801.23(4), continue to receive priority over all other equally qualified individuals in the receipt of services funded in whole or in part by the U.S. Department of Labor, in accordance with 38 U.S.C. §4215.

(d) Boards shall ensure that eligible foster youth receive priority over all other equally qualified individuals-except federal qualified veterans, qualified spouses, and state qualified veterans as defined in this chapter-in the receipt of federal and state funded services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 24, 2006.

TRD-200602909

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 475-0829

◆ ◆ ◆
40 TAC §801.26

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302; Texas Family Code, Chapter 264; and Texas Government Code, Chapter 551 and Chapter 2308.

§801.26. One-Stop Innovation Plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 24, 2006.

TRD-200602911

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 475-0829

◆ ◆ ◆
SUBCHAPTER C. THE INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

40 TAC §801.51

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed amendments affect Title 4, Texas Labor Code, particularly Chapters 301 and 302; Texas Family Code, Chapter 264; and Texas Government Code, Chapter 551 and Chapter 2308.

§801.51. Purpose and General Provisions.

(a) The purpose of the rules contained in this subchapter is to implement Texas Government Code, §2308.264 and §2308.267, including provisions relating to directly delivering services, Board contracting guidelines, and other conflict of interest provisions.

(b) It is the intent of the Commission that these rules strengthen the confidence of the public in the Texas workforce system.

(c) A Board may set local policies that are more restrictive than those set forth in this subchapter.

(d) A Board shall develop the policies and procedures required by this subchapter [~~no later than September 1, 2004~~].

(e) A Board member with an existing contract for workforce services shall comply with this subchapter no later than the earliest of the following:

(1) the expiration of the contract;

- (2) the contract renewal date; or
- (3) the expiration of the Board member's term or the Board member's resignation. [; or]

[(4) September 1, 2005.]

(f) A Board shall adhere to the requirements of Texas Government Code, Chapter 551 (Texas Open Meetings Act). In particular, a Board shall:

(1) post appropriate notice in accordance with Texas Government Code, Chapter 551, Subchapter C;

(2) ensure that all public business or public policy over which the Board has supervision or control is discussed, considered, or acted upon during a properly posted and convened open meeting; and

(3) prepare and retain minutes or tape recordings of each open meeting of the Board. The minutes shall:

(A) state the subject of each deliberation; and

(B) indicate each vote, order, decision, or other action taken.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 24, 2006.

TRD-200602912

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 475-0829



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

SUBCHAPTER G. INTERNATIONAL BRIDGES

43 TAC §§15.70 - 15.76

The Texas Department of Transportation (department) proposes amendments to §§15.70 - 15.76, concerning international bridges.

EXPLANATION OF PROPOSED AMENDMENTS

The proposed amendments are necessary to implement the provisions of House Bill 1653, 78th Legislature, Regular Session, 2003; add, revise or eliminate certain terms and definitions; update statutory references; clarify existing information; modify requirements for public involvement; and allow for a comparison of competing applications.

The amendments to §15.70 incorporate a new provision enacted by House Bill 1653, which amended Transportation Code, §201.612, to permit an entity that is authorized to construct a

new international bridge to enter into the approval process with the Texas Transportation Commission (commission) and the United States simultaneously. This represents a change from the existing process whereby an applicant obtained commission approval prior to requesting approval from the United States. Section 15.70 is further amended to update relevant statutory references.

Section 15.71 is amended to add the definitions of a competing bridge applicant and a district office, change the term "study sector" to "study area," and remove the definition of the Texas-Mexico Toll Bridge Study. The definition of competing bridge applicant is necessary to address the situation where two or more entities may be interested in constructing a new international bridge in the same area. The definition of district office is necessary to properly identify the specific location where applicants may obtain information. In this section, and throughout the amended rules, the term "study sector" is being replaced by the term "study area" in order to bring the application process up to current transportation planning analysis methods. Similarly, the definition of, and all references to, the Texas-Mexico Toll Bridge Study (Study) are being removed because it is no longer used as a basis for analyzing international bridges.

The first sentence of §15.72 is being removed as it is duplicative of a statement found in §15.70. The amendments to this section also include additional language to assist potential applicants with information-gathering related to the application process by directing them to their local department district office and the Transportation Planning and Programming Division.

The amendments to §15.73 set forth the process for addressing competing applications, clarify the requirements related to environmental documentation and public involvement, establish new guidelines for notification of public officials, and remove all references to the Study and sector as previously described.

Section 15.73(3)(A) is amended to clarify that an applicant must comply with the department's administrative rules pertaining to Environmental Policy and must obtain all environmental approvals required for the project. These changes are necessary to address confusion regarding the type of environmental documentation that is required for international bridge projects and to ensure consistency in the environmental review process.

Section 15.73(3)(B) has been amended to align the public involvement requirements related to international bridge applications with the public involvement requirements found in the department's administrative rules pertaining to Environmental Policy. This change is necessary to address confusion regarding the public involvement process and to ensure that members of the public, competing bridge applicants, and local officials have adequate notice of the hearing or meeting and an opportunity to comment on the proposed project or provide information as appropriate.

In addition, the amendments to paragraph (3)(B) of §15.73 set forth the information that an applicant must include in the notices of public hearings and meetings. Specifically, new paragraph (3)(B)(i) requires a statement that the applicant intends to submit an international bridge application to the commission. New paragraph (3)(B)(ii) requires a description of the project, including design and location information. New paragraph (3)(B)(iii) requires an instruction to competing bridge applicants that they have 60 days from the date the notice is published to provide the applicant with design, financial, and social and environmental information on the competing project.

New §15.73(3)(C) requires the applicant to send a copy of the notice described in §15.73(3)(B) to the county judges and city mayors within a certain geographic area.

New §15.73(4) is added to set forth the procedures to be followed when two or more applicants compete for approval of the construction of a new international bridge in the same study area. The amendments require an applicant to address the impact of competing projects and demonstrate how its submittal is superior to the other projects.

New §15.73(4)(A) describes the method by which the applicant will provide an analysis of its project compared against competing projects. The amendments require the applicant to analyze its project as a stand-alone project and then analyze its project against competing projects, demonstrating the superiority of one project by comparing the impacts on cost benefits, project viability, design, and social and environmental impacts.

Finally, new §15.73(4)(B) provides that the applicant will not be required to analyze a competing project if the competing bridge applicant does not provide data to the applicant necessary to perform the analysis on a competing project.

Appendix A, which describes the Texas Mexico border sectors identified in the Study, has been deleted since the Study is no longer used as a basis for analyzing international bridges.

The amendment to §15.74 removes a reference to an organizational position no longer used by the department.

The amendments to §15.75 eliminate references to obsolete state agency titles, and the section is revised to reflect current titles. In addition, new subsection (b)(4) of §15.75 is added to clarify that the commission, as part of its analysis of the application, will consider information pertaining to competing bridges, information timely submitted by competing bridge applicants as well as any other information provided by the department.

In §15.76, all references to the Study and sector are being removed as previously described. New subsection (e)(3) of §15.76 is added to reflect language in Transportation Code, §201.612, and provides that applications not approved by the commission must be withdrawn from consideration for approval by the United States.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Mr. James Randall, Director, Transportation Planning and Programming, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Randall has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be an improved and more effective international bridge application process. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§15.70 - 15.76 may be submitted to James Randall, Director, Transportation Planning and Programming, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on July 10, 2006.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.612, which authorizes the commission to adopt rules to administer that section.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.612.

§15.70. Purpose.

Transportation Code, §201.612 provides [Texas Civil Statutes, Article 6674v-8, provide] that a political subdivision or private entity authorized to construct or finance the construction of a bridge over the Rio Grande must obtain approval from [of] the Texas Transportation Commission and the United States [for the construction of the bridge before requesting approval from the federal government] under Subchapter IV, Chapter 11, Title 33, United States Code, for the construction of the bridge. Transportation Code, §201.612 directs the department to allow an applicant to concurrently seek approval from the commission and the United States. This subchapter [undesignated head] prescribes the procedures and conditions by which a political subdivision or private entity may obtain the approval of the commission.

§15.71. Definitions.

The following words and terms, when used in this subchapter [undesignated head], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A political subdivision or private entity authorized by law to construct or finance the construction of a bridge over the Rio Grande.

(2) Commission--The Texas Transportation Commission.

(3) Competing bridge applicant--An applicant whose project will compete for traffic and revenue and may have social, environmental, traffic congestion, and mobility impact on the study area.

(4) [(3)] Department--The Texas Department of Transportation.

(5) District office--One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

(6) [(4)] Metropolitan planning organization--An organization designated in certain urbanized areas to carry out the transportation planning process as required by Title 23, United States Code, §134.

(7) [(5)] Project--The construction or the financing of the construction of a bridge over the Rio Grande.

(8) [(6)] Study area-- [Study sector--The affected area of the proposed bridge as defined in the Texas Mexico Toll Bridge Study, Research Report Number 1976;] The [this] area on [will encompass] both sides of the Texas-Mexico border affected by the proposed bridge.

[(7) Texas-Mexico Toll Bridge Study--Research Report Number 1976, Center for Transportation Research, Bureau of Engineering Research, The University of Texas at Austin, April 1994; this study may be obtained by writing Center for Transportation Research

Library, 3208 Red River, Suite 200, Austin, Texas 78705, and paying a reproduction fee.}]

§15.72. *New Bridge.*

[A political subdivision or private entity that desires to construct or finance the construction of a bridge over the Rio Grande must obtain approval from the commission for the construction of the bridge before requesting approval from the federal government under Subchapter IV, Chapter 11, Title 33, United States Code.] To obtain commission [such] approval for a project, the political subdivision or private entity must submit an application and comply with all requirements and conditions imposed by this subchapter [these sections]. Prior to submitting an application to the department, applicants are encouraged to confer with their local department district office. The applicant should direct questions regarding the application and approval process, as well as questions relating to the respective roles and responsibilities of the applicant and the department, to the Transportation Planning and Programming Division (TPP).

§15.73. *Preliminary Studies.*

Prior to submitting an application to the department for the approval of a project, an applicant shall conduct a study of the design, financial feasibility, and [the] social and environmental impact of the project, including the effect of any competing applications.

(1) Design. The applicant shall provide a preliminary design geometric layout certified by a registered professional engineer to be in accordance with standards and criteria from appropriate design manuals applicable at the date of application. The layout must identify:

(A) horizontal and vertical alignments and cross-slope data of the proposed structure showing overall structure length, width, spans, span length, and type of construction, along with dimensions, where applicable, of:

- (i) lane width;
- (ii) curb width;
- (iii) sidewalks;
- (iv) shoulder width;
- (v) calculated minimum vertical clearance over other roadways and waterways; and
- (vi) toll booths and miscellaneous appurtenances;

(B) geometric termini locations along with inspection stations and queue lanes where applicable;

(C) the location and preliminary layout of approach roadways and intersections on both sides of the border with changes necessitated by the project to existing facilities on both sides of the border; and

(D) the location and layout of any other accommodation of buildings or appurtenances deemed necessary by the applicant and any law or regulation governing the operation and maintenance of port of entry operations.

(2) Financial feasibility study. An applicant shall conduct a feasibility study to determine the financial viability of the project. The study shall include the following information.

(A) A financial overview of the project, which shall include:

(i) summary cost estimates for the planning, design, construction, operation, and maintenance of the project; and

(ii) a statement of all financing requirements for the project and sources of all financing.

(B) A project construction schedule identifying the timing, amount, and source of all cash required to pay for all construction costs.

(C) An analysis of the expected financing period of the project, such period to be the greater of 10 years or the time taken to fully pay any and all liabilities incurred for the planning, design, construction, operation, and maintenance of the project plus the time taken to fully pay any and all liability refunding, renegotiations, conversions, and extensions.

(i) An applicant that issues or contemplates issuing any form of liability with a term longer than one year within three years of the date of application shall consider a portion of that liability as incurred for the planning, design, construction, operation, and maintenance of the project unless the applicant demonstrates otherwise to the satisfaction of the commission in the financial feasibility study. A liability not less than the cost of construction and not more than the costs of planning, design, and construction shall be considered in the financial feasibility study as if it had been incurred directly for the project.

(ii) The term of any liability amount determined in clause (i) of this subparagraph shall be the longest term of any liabilities issued or contemplated by the applicant within three years of the application date plus the time taken to fully pay any and all liability refundings, renegotiations, conversions, and extensions.

(D) A detailed analysis of costs over the expected financing period of the project, which shall include:

(i) costs of operations by reasonable expense categories for each year; and

(ii) costs of maintenance for each year, such costs identifying each major system, structure, and component of the project that is subject to wear or deterioration, and the analysis of such costs stating both the cost and the expected frequency of inspection, repair, renewal, rehabilitation, and/or replacement required to keep the project in like-new condition.

(E) A pro forma analysis based on cash basis accounting for each year of planning, design, construction, and the expected financing period of the project showing:

(i) anticipated cash receipts, sources of cash receipts, and rates charged to achieve those cash receipts;

(ii) anticipated cash disbursements;

(iii) anticipated cash balances;

(iv) cash used to meet the requirements of any bond sinking fund and loan or liability amortization payment.

(F) A description of the methods used in preparing the financial feasibility study, the assumptions contained in the study, and persons and entities responsible for the preparation of the study.

(G) An analysis of the need for the project and potential impact on traffic congestion and mobility, ~~[including identification of the Texas-Mexico Toll Bridge Study sector, as described in Appendix A of paragraph (4) of this section, in which the project is located,] and:~~

(i) average annual daily traffic (AADT) in the study ~~area [sector]~~ for major arterials and controlled access roadways for both sides of the border for five years preceding the date of the application;

(ii) data from any existing international bridge or other international crossing in the study area [sector and adjacent sectors] indicating AADT for the five preceding years;

(iii) data from any existing international bridge or other international crossing in the study area [sector and the adjacent sectors] indicating average delay time for traffic seeking to use any international bridge or other international crossing for the five preceding years;

(iv) projected AADT for the proposed bridge and other crossings in the study area [sector and adjacent sectors] 20 years after completion (projections shall be based on the current department travel demand model, and the process used to make the projections shall be clearly identified and submitted with the data);

(v) a comparison of the project with other similar projects already in operation; and

(vi) a projection of changes in the free flow of trade caused by the project.

(3) Social and environmental impact. An applicant shall conduct a study of the social and environmental impact of the project[, consistent with the spirit and intent of the National Environmental Policy Act (NEPA), Title 42, United States Code, §§4321 et seq., and Title 23, United States Code, §109(h).] and shall provide for public involvement and notice to local officials.

(A) Environmental documentation. An applicant shall comply with the requirements in Chapter 2 of this title (relating to Environmental Policy) and shall obtain the environmental approvals required for the project. In addition to any approval required by a federal agency, the applicant shall obtain the department's approval of the form and content of an environmental document prepared under subchapters A and C of Chapter 2 of this title.

~~[(i) An applicant shall prepare an environmental assessment or an environmental impact statement in accordance with NEPA.]~~

~~[(ii) The form and content of an environmental assessment or environmental impact statement prepared by an applicant must be approved by the department.]~~

(B) Public involvement. An applicant shall comply with the public involvement requirements in Chapter 2 of this title that apply to paragraph (3)(A) of this section. Notices of public meetings and public hearings must include [An applicant shall provide for public involvement by]:

(i) a statement that the applicant intends to submit an international bridge application to the commission [holding one or more public meetings];

(ii) a description of the proposed bridge, including a description of the design and adjacent facilities and identification of the area to be served [publishing a notice of the public meeting in local newspapers having a general circulation not less than 10 days before each public meeting]; and

(iii) instructions that competing bridge applicants may submit information pertaining to the design, financial feasibility, and social and environmental impact of a competing project to the applicant no later than 60 days after the date of the notice [notifying the department in writing not less than 10 days in advance of each public meeting].

(C) Notice to local officials [Reord]. The applicant shall send a copy of the notice described in paragraph (3)(B) of this section by first class mail to the county judge of each county within

150 miles of the location of the project and the mayor of each municipality within 50 miles of the location of the project. [An applicant shall provide the department a summary of all public meetings held under this section. The summary and analysis for each public meeting shall include:]

~~[(i) a summary of the meeting;]~~

~~[(ii) a summary of comments received, and the response to and analysis of comments; and]~~

~~[(iii) a summary of the proposed changes in project location and design planned as a result of comments.]~~

~~[(D) Revision to environmental document. An applicant shall revise the environmental document for the project to address any issues or concerns identified during the public involvement process.]~~

(4) Analysis of competing applications. An applicant shall address the impact of competing projects (if any) and demonstrate how its submittal is superior to that of any competing bridge applicant.

(A) The applicant's preliminary study analysis shall be performed depicting any competing projects. The applicant shall perform an analysis demonstrating the applicant's project as a stand-alone project and, if there is a competing project, an analysis showing both the applicant's project and any competing projects. The analysis reflecting the competing projects must demonstrate how design, traffic, financial, social, and environmental impacts are affected by the competing projects and shall include the rationale for how one project is superior based on these impacts, for example, cost benefits, project viability, better design, and less adverse social and environmental impacts.

(B) The applicant will not be required to include an analysis of the competing project unless the competing bridge applicant provides the information described in paragraph (3)(B)(iii) of this section by the deadline specified in that paragraph.

~~[(4) Sectors. The following Appendix A describes the sectors identified in the Texas-Mexico Toll Bridge Study.]~~
~~[Figure: 43 TAC §15.73(4)]~~

§15.74. Application.

To secure approval of a project, an applicant must file an application and 20 copies of the application with the department's [deputy] executive director [for transportation planning and development] or his or her designee who shall serve as department liaison for the project. The application shall be in a form prescribed by the department, and must include [be accompanied by]:

(1) a description of the applicant, including:

(A) form of organization under the laws of this state;

and

(B) history of operations and/or business conducted;

(2) a definition of major financial, operating, and business policies of the applicant that will affect operations or the conduct of business, including:

(A) key operating conditions; and

(B) compliance with existing federal, state, and local laws and regulations;

(3) the preliminary study completed in accordance with §15.73 of this subchapter [title] (relating to Preliminary Studies); and

(4) any written commitments from the appropriate federal jurisdictions of the United Mexican States to provide adequate roadway connections to the bridge, and similar commitments from state

and municipal transportation agencies for any state highway or local street infrastructure necessary to make the bridge fully operational.

§15.75. Department Action.

(a) Coordination.

(1) Upon the receipt of a complete application, the department will submit a copy of the application and request views and comments from the:

(A) Department of Public Safety of the State of Texas;

(B) Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~];

(C) Texas Historical Commission;

(D) Department of Agriculture;

(E) Texas Alcoholic Beverage Commission;

~~[(F) Texas Department of Commerce];~~

~~[(F)]~~ [(G)] Office of the Governor;

~~[(G)]~~ [(H)] any other state agency the department determines is appropriate considering the nature of the project; and

[(H)] [(4)] any entity which may be significantly affected by the project.

(2) The department will also seek the advice of the local metropolitan planning organization, if any, as to whether the project will be consistent with the regional transportation plan.

(3) The department will allow an agency or entity 20 days from the date the agency or entity receives a copy of the application for the submission of views and comments under this subsection.

(b) Process and analysis of application.

(1) The department reserves the right to return, or hold, pending corrections submitted by the applicant, an application that the department determines is not in full compliance with the requirements of §15.74 of this subchapter [title] (relating to Application). The department, when returning an application, will identify in writing all areas deemed to be deficient.

(2) The department and the commission will not perform work to recast, redraw, calculate, construct, reconstruct, or otherwise produce any element of the preliminary study which is not adequately presented by the applicant.

(3) The commission may consider missing, ambiguous, uncertain, or unclear elements in the financial feasibility study as tending to the conclusion that the project has substantial speculative elements in its financing and should not be approved.

(4) The commission will consider the impact of a competing bridge, whether proposed, approved, or constructed. The commission will consider information provided by a competing bridge applicant only to the extent the competing bridge applicant timely submitted the information to the applicant under §15.73 of this subchapter. The commission will consider any other information provided by the department.

(c) Public hearing. If the department finds that the application meets the requirements of this section [~~§15.74 of this title (relating to Application)~~], it shall notify the applicant of its findings, forward a copy of the findings to the Office of the Governor, and shall conduct a public hearing to receive public comment on the project. A public hearing held by the department under this subsection shall be conducted by the executive director of the department or the director's designee in accordance with §1.5 of this title (relating to Public Hearings). Any per-

sons, including, but not limited to, official representatives of a county, municipality, metropolitan planning organization, or other governmental entity, and any individual, group, or association may provide comment.

(d) Report to commission. Subsequent to the public hearing, the department will submit the application together with its findings and recommendations to the commission for appropriate action. The department will consider the views and comments received under subsection (a) of this section prior to making its findings and recommendations.

§15.76. Commission Action.

(a) Commission analysis.

~~[(4)]~~ The commission may consider the advice of the staff of the department and consultants that the commission may choose regarding the sufficiency of the information, the probable accuracy of projections, the anticipated financial condition of the application and the project, the impact of the project on the economy and free trade, and any other information the commission determines appropriate.

~~[(2) The commission may use the Texas-Mexico Toll Bridge Study as the initial basis for evaluating the demand, impact on the economy and the potential impact on the free flow of trade anticipated by the project. An applicant may submit additional information which supports, amplifies, or rebuts data in the Texas-Mexico Toll Bridge Study in the applicant's feasibility study.]~~

(b) Comments and commitments of other entities. Prior to granting approval of a project, the commission shall consider, but is not bound by:

(1) the nature and extent of any commitments from Mexican authorities provided in accordance with §15.74(4) of this subchapter [title] (relating to Application); and

(2) the views and comments of an agency or entity listed in §15.75 of this subchapter [title] (relating to Department Action).

(c) Project requirements. The commission will not approve a project unless it finds that:

(1) the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts;

(2) the project is consistent with the state transportation plan and, if appropriate, with the regional transportation plan developed by a metropolitan planning organization having jurisdiction over the project; and

(3) the future transportation infrastructure, at the time of the bridge operations, on both sides of the border will be of sufficient capacity to support the new structure.

(d) Financial requirements. The commission will not approve a project if it finds that the project's financial prospects over the expected financing period of the project are likely to categorize the project as being of less than investment quality due to one or more of the following conditions:

(1) the project has more than minimal speculative elements in its prospective finances;

(2) the financial future of the project cannot be considered as well assured;

(3) protection of any lenders or bond holders is not well safeguarded over the expected financing period of the project; or

(4) the project will probably cause negative impacts on the economy or the free flow of trade that are greater than any probable positive impacts in the study area [Texas-Mexico Toll Bridge Study sector where the project is located and adjacent sectors].

(e) Final action.

(1) Approval or disapproval of the project shall be by written order of the commission, and shall include the rationale, findings, and conclusions on which approval or disapproval is based.

(2) The commission will approve or disapprove the application within 120 days of the date of receipt of a complete application. If an application is returned under § 15.75 of this subchapter [title relating to Department Action], the commission will approve or disapprove the application within 120 days of the date that re-submitted complete application has been received by the department.

(3) If the commission does not approve the application, the applicant shall withdraw the request for approval from the United States.

(4) [(3)] The department will provide written notification of the commission's action to the applicant and the Office of the Governor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602922

Richard D. Monroe

General Counsel

Texas Department of Transportation

Earliest possible date of adoption: July 9, 2006

For further information, please call: (512) 463-8683

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.5

The Texas Residential Construction Commission adopts amendments to 10 TAC Chapter 300, §300.5, regarding agency task forces, with no changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 953).

The amendments eliminate references to the Mold Reduction and Remediation Task Force and the Rain Harvesting and Water Recycling Task Force, which were dissolved by the commission on December 31, 2005.

The commission received no comments on the proposed amendments.

The amendments are adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; §430.003, regarding use of a mold reduction and remediation task force; and §430.004, regarding use of a rain harvesting and water recycling task force; and Government Code Chapter 2110, regarding a state agency's use of an advisory committee or task force.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2006.

TRD-200602877

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Effective date: June 12, 2006

Proposal publication date: February 17, 2006

For further information, please call: (512) 463-2886



CHAPTER 303. REGISTRATION

SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §§303.1, 303.5, 303.7, 303.9, 303.13, 303.15, 303.17, 303.19

The Texas Residential Construction Commission adopts amendments to 10 TAC Chapter 303, Subchapter A, §§303.1, 303.5, 303.7, 303.9, 303.13, 303.15, 303.17, and 303.19, relating to the registration of builders. Sections 303.1, 303.5, 303.7, 303.13, 303.15, and 303.17 are adopted without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2956). Section 303.9 and §303.19 are adopted with non-substantive changes to the proposed text as published. The change to §303.9(a)(2) was made to correct a spelling error. The changes to §313.19(a) and (c) were made for grammatical clarification.

The amendments are adopted to clarify procedures and intent and to add additional requirements for registration to the current rules.

The commission received no comments on the proposed amendments.

The amendments are adopted pursuant to Chapter 416, Property Code, which provides for the registration of builders and, generally, pursuant to Property Code §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

§303.9. Eligibility Requirements.

(a) At the time the application for registration is filed with the commission:

(1) individual applicants must be at least 18 years of age and a citizen of the United States or a lawfully admitted alien and must demonstrate to the satisfaction of the commission that the applicant is honest, trustworthy and has integrity.

(2) individuals who apply as the designated agents of a corporation, limited liability company, partnership, limited partnership, limited liability partnership or other entity must be at least 18 years age and citizen of the United States or a lawfully admitted alien and must demonstrate to the satisfaction of the commission that the individual is honest, trustworthy and has integrity.

(3) a corporation, limited liability company, partnership, limited partnership, limited liability partnership or other entity must demonstrate that it is properly registered and in good standing with the Secretary of State and must demonstrate to the satisfaction of the commission that the entity has acted honestly, with trustworthiness and with integrity in its business dealings.

(b) The commission may consider a registered builder's complaint history, history of homeowner-filed requests for participation in the SIRP, compliance with state and federal law, compliance with the commission rules and requests for information, history of unsatisfied judgments and unpaid arbitration awards, history of bankruptcies, compliance history with the Secretary of State regulations and payment of taxes, and history of use of corporate and partnership structures as a

means to avoid liability in evaluating whether an applicant is honest, trustworthy and has integrity.

§303.19. Renewal.

(a) After March 1, 2004, a person operating as a builder in this state must keep a current certificate of registration and must timely renew its certificate of registration.

(b) A builder that has been issued an even-numbered builder registration certificate must renew its registration by the last day of February of each even-numbered year. A builder that has been issued an odd-number certificate of registration must renew its registration by February 28 of each odd-numbered year.

(c) A builder who fails to maintain a current certificate of registration may be subject to a late fee and either an administrative penalty or other disciplinary action, as determined by the commission.

(d) In order to renew a certificate of registration, a builder shall submit a completed application for renewal of a certificate of registration and the required fee to the commission not later than thirty (30) days prior to the end of the applicable registration period as provided in subsection (b) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2006.

TRD-200602879

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Effective date: June 12, 2006

Proposal publication date: April 7, 2006

For further information, please call: (512) 463-2886



10 TAC §303.3, §303.11

The Texas Residential Construction Commission repeals §303.3 and §303.11, relating to provisional registration of builders and information on past criminal history of builders. The provisional registration rule is repealed because the statutory authorization expired on January 1, 2005. The criminal history information section of §303.11 has been subsumed into other amendments to Chapter 303.

No comments were received regarding the proposed repeal of these sections, which was published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2959).

The repeal of these sections are ordered pursuant to Property Code, §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Property Code, §416.003, which provided for a provisional registration but expired by operation of law on January 1, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602870

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Effective date: June 11, 2006

Proposal publication date: April 7, 2006

For further information, please call: (512) 463-2886



SUBCHAPTER B. REGISTRATION OF HOMES

10 TAC §§303.110, 303.115, 303.140

The Texas Residential Construction Commission adopts amendments to 10 TAC Chapter 303, Subchapter B, §§303.110, 303.115, and 303.140, relating to registration of homes by a builder. Section 303.110 and §303.115 are adopted without changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 955). Section 303.140 is adopted with non-substantive changes to the proposed text as published.

The adopted amendments identify appropriate forms to be used for home registration. The change to the text of §303.140 does not affect any persons not affected by the published proposed text of the rule.

The commission received no comments on the proposed amendments.

The amendments are adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16; and §426.003, which requires the commission to adopt rules to specify the information that a registrant must provide in order to register a home.

§303.140. Home Registration Process.

(a) A person registering a home under this subchapter shall use the Home Registration Form.

(b) A completed home registration form must be submitted to the commission with the appropriate fee by first class mail, personal delivery or via the commission's secure Web portal provided for online home registrations by builders.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602871

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Effective date: June 11, 2006

Proposal publication date: February 17, 2006

For further information, please call: (512) 463-2886



**SUBCHAPTER C. REGISTRATION OF
THIRD-PARTY INSPECTORS**

10 TAC §303.205

The Texas Residential Construction Commission adopts amendments to 10 TAC §303.205, relating to denial of registration of a third-party inspector, with no changes to the proposed text as

published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1137).

The amendments provide additional grounds for which the commission may deny an application to be a third party inspector.

The commission received no comments on the proposed amendments.

The section is adopted under Property Code §408.001 which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Property Code §427.001, regarding third-party inspector qualifications.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602867

Susan K. Durso

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Effective date: June 11, 2006

Proposal publication date: February 24, 2006

For further information, please call: (512) 463-2886



CHAPTER 305. PRACTICE AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

SUBCHAPTER C. PROCEEDINGS AT SOAH

10 TAC §305.33

The Texas Residential Construction Commission adopts new section 10 TAC Chapter 305, Subchapter C, §305.33 without changes to the text as published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1138). The new section clarifies the agency's post-settlement dismissals of actions at the State Office of Administrative Hearings (SOAH), giving the Executive Director the authority to request a dismissal from the SOAH docket once certain criteria are met by the builder.

Subchapter D was incorrectly cited in the preamble for the proposed version (31 TexReg 1138), February 24, 2006. Subchapter C is the correct chapter.

The commission received no comments on the proposed new section.

The new section is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules, Property Code Chapters, 418 and 419 and Government Code, Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602868

Susan K. Durso
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Texas Residential Construction Commission

Effective date: June 11, 2006

Proposal publication date: February 24, 2006

For further information, please call: (512) 463-2886



SUBCHAPTER D. POST-SETTLEMENT AND POST-HEARING MATTERS

10 TAC §305.42, §305.43

The Texas Residential Construction Commission adopts new 10 TAC Chapter 305, Subchapter D, §305.42, regarding the imposition of expenses and costs incurred in a contested case when a violation or denial is upheld. There were no changes in the text.

The commission also adopts new 10 TAC Chapter 305, Subchapter D, §305.43, regarding injunctive relief, with non-substantive changes to the proposed text. Both new sections were published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1138). The changes from the proposed text for §305.43 further clarify the commission's procedure for seeking injunctive relief against a person acting as builder or remodeler without proper registration. The changes do not affect any persons not previously notified of the substance of the regulation in the published version of the text.

The commission received no comments on either section.

The new sections are adopted under Property Code, §408.001, which provides general authority for the commission to adopt rules, Property Code, Chapters 418 and 419 and Government Code, Chapter 2001.

§305.43. Injunction.

(a) Prior to seeking injunctive relief, the commission will inform unregistered builders and remodelers in writing of the requirements to register and of the potential consequences of failing to do so.

(b) The commission may seek the assistance of the Attorney General to bring an action in district court to enjoin the person from engaging in or continuing a violation of the Act or commission rules or doing an act that furthers a violation of the Act or commission rules. In the action, the court may enter as proper an order awarding a preliminary or final injunction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602869

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Effective date: June 11, 2006

Proposal publication date: February 24, 2006

For further information, please call: (512) 463-2886



CHAPTER 306. COMPLAINTS

10 TAC §306.1

The Texas Residential Construction Commission adopts new §306.1, relating to the complaint process with no changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2961).

The new rule sets forth the information and process related to complaints filed with the commission.

The commission received no comments on the new section.

The new section is adopted under Property Code §408.001 which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; and §409.001, which requires the commission to have procedures for responding to complaints received.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2006.

TRD-200602876

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Effective date: June 12, 2006

Proposal publication date: April 7, 2006

For further information, please call: (512) 463-2886



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURE

34 TAC §9.107

The Comptroller of Public Accounts adopts an amendment to §9.107, concerning appraised value limitation and tax credit for certain qualified property, without changes to the proposed text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3357).

The section is being amended in response to 79th Legislature, 2005, House Bill 2201, effective September 1, 2005, amending Tax Code, §313.024(b). The new law adds clean coal projects and gasification projects for coal and biomass mixtures as uses of property that are eligible for appraised value limitations.

Subsection (b) is amended to add to the definitions of qualified property eligible for appraised value limitations, to correct standard industrial code references, for clarification, and to omit a reference to Government Code, §481.151 in subparagraph (D), as the provision has expired.

Subsection (c), concerning adopted by reference Form 50-296, is being revised to comply with changes in law and to include other matters necessary to make a determination of a property's qualification for a value limitation.

Subsection (o) is being amended to clarify the requirements for submitting and reviewing applications for tax credits and for administering the tax credit program under Tax Code, Chapter 313.

Subsection (p) is being amended to correct the state agency where the chief appraiser must send an annual report of properties that are subject to an appraised value limitation. Other subsections are amended for clarity.

No comments were received regarding adoption of the amendment.

The amendment is adopted under and implements Tax Code, §§313.024(b), 313.104, and 313.105.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2006.

TRD-200602884

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: June 12, 2006

Proposal publication date: April 21, 2006

For further information, please call: (512) 475-0387



SUBCHAPTER I. VALIDATION PROCEDURES

34 TAC §9.4037

The Comptroller of Public Accounts adopts an amendment to §9.4037, concerning use of electronic communications for transmittal of property tax information, to conform to Tax Code, §25.19(b-1), without changes to the proposed text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3362). The statute requires that the chief appraiser of each county appraisal district include in the notice of appraised value for real property, the difference, expressed as a percentage increase or decrease, in the appraised value of the property for the current year as compared to the fifth year before the current tax year.

The section is being amended in response to 79th Legislature, 2005, House Bill 1984, effective January 1, 2006. The law requires additional information to be included on notices of appraised value prepared by appraisal districts. Subsection (d)(1), the electronic XML document schema, is amended to include the percentage increase in value required to be included in the notices of appraised value.

No comments were received regarding adoption of the amendment.

The amendment is adopted under and implements Tax Code, §25.19(b-1) and §1.085(e).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2006.

TRD-200602885

Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: June 12, 2006
Proposal publication date: April 21, 2006
For further information, please call: (512) 475-0387



PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS- ACTIVECARE)

34 TAC §§41.42 - 41.44, 41.53

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts the repeal of the following rules concerning certain TRS pass-through funding programs that have been transferred or are unfunded: 34 TAC §41.42, relating to the payment of supplemental compensation; 34 TAC §41.43, relating to the payment of state assistance for meeting minimum effort; 34 TAC §41.44, relating to the payment of additional support for certain school districts paying Social Security taxes; and 34 TAC §41.53, relating to the waiting period for supplemental compensation. The repeals of §§41.42 - 41.44, and 41.53 are adopted without changes as published in the March 31, 2006 issue of the *Texas Register* (31 TexReg 2834).

Recent legislation (Senate Bill 1691 and Senate Bill 1863, 79th Texas Legislature, Regular Session) transfers the functions and duties relating to the compensation supplementation program from TRS to the Texas Education Agency (TEA), effective September 1, 2005. As of this date, TRS has completed all functions relating to the compensation supplementation program, including the final payment of fiscal year 2005 supplemental compensation. Accordingly, the Board adopts the repeal of related TRS rules §41.42, concerning the payment of supplemental compensation, and §41.53, concerning the waiting period for supplemental compensation.

The payment of state assistance for meeting minimum effort was established during the 77th Texas Legislature, Regular Session, by Texas Insurance Code Article 3.50-9, now recodified as Chapter 1581 of the Texas Insurance Code. Funding for this assistance was provided through fiscal year 2004, but no funding has since been provided by the Texas Legislature. Future funding for this assistance does not seem likely to occur. Accordingly, the Board adopts the repeal of related TRS rule §41.43, concerning the payment of state assistance for meeting minimum effort.

The payment of additional support for certain school districts paying Social Security taxes was also established during the 77th Texas Legislature, Regular Session, by Texas Insurance Code Article 3.50-9, recodified as Chapter 1581 of the Texas Insurance Code. Funding for this support was provided through fiscal year 2003, but no funding has since been provided by the Texas Legislature. Future funding for this support does not appear likely to occur. Accordingly, the Board adopts the repeal of

related TRS rule §41.44, concerning the payment of additional support for certain school districts paying Social Security taxes.

TRS received no public comments on the proposed repeals of §§41.42 - 41.44, and 41.53.

Statutory Authority: The repeals are adopted under §825.102, Government Code, which authorizes the Board to adopt rules for the administration of TRS funds and for the transaction of Board business; in addition, the repeal of TRS §41.44 is adopted under §1581.703, Insurance Code, which authorizes TRS to adopt rules as necessary to implement Chapter 1581, Subchapter O, Insurance Code, relating to additional support for certain school districts paying Social Security taxes.

Cross-Reference to Statute: For the adopted repeals of §41.42 and §41.53--Act of May 27, 2005, 79th Legislature, Regular Session, Senate Bill 1691, §56, Chapter 1359, and Act of May 29, 2005, 79th Legislature, Regular Session, Senate Bill 1863, §18.07, Chapter 899, which transfer the functions and duties of TRS with respect to the compensation supplementation program established under Chapter 1580, Insurance Code, and other applicable law, and any appropriation relating to that program are transferred to TEA and providing that a reference in law to TRS with respect to the compensation supplementation program means TEA; for the adopted repeal of §41.43--Chapter 1581, Subchapter C, Insurance Code, relating to state assistance for meeting minimum effort; and for the adopted repeal of §41.44--Chapter 1581, Subchapter O, Insurance Code, relating to additional support for certain school districts paying Social Security taxes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 24, 2006.

TRD-200602907
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: June 13, 2006
Proposal publication date: March 31, 2006
For further information, please call: (512) 542-6483



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 5. FINANCE

SUBCHAPTER F. TRANSPORTATION DEVELOPMENT CREDIT PROGRAM

43 TAC §§5.70 - 5.74

The Texas Department of Transportation (department) adopts new Subchapter F, §§5.70 - 5.74, concerning the Transportation Development Credit Program. New §5.72 is adopted with changes to the proposed text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1628). New §§5.70, 5.71, 5.73 and 5.74 are adopted without changes to the pro-

posed text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1628) and will not be republished.

EXPLANATION OF ADOPTED SECTIONS

Title 23, USC, §120, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, SAFETEA-LU (Pub. L. No. 109-59)(2005) (SAFETEA-LU), permits a state to use certain toll revenue expenditures, transportation development credits, formerly called toll credits, as a credit toward the non-Federal share of all programs authorized by Title 23, with the exception of emergency relief programs and for transit programs authorized by Title 49, Chapter 53. Transportation development credits are designed to encourage states to increase capital investment in infrastructure; to increase the flexibility of state transportation finance programs; and to enable states to more effectively utilize existing resources. The Texas Transportation Commission (commission) has a statutory obligation to enhance existing sources of revenue and to create alternate sources of revenue. The department proposes the adoption of rules concerning transportation development credits to implement the applicable laws.

New §5.70, Purpose, identifies the applicable federal law and states its purpose and also states that the rules are intended to specify the procedures and conditions by which an entity may be eligible for award of transportation development credits and how the commission may award credits.

New §5.71, Definitions, defines "commission," "department," "eligible entity," "eligible project," "executive director," "locally earned credits," and "transportation development credits."

The term "eligible entity" is defined as any entity that is eligible for funding under Title 23, USC or Title 49, Chapter 53, USC and is in good standing with the department and has no deficiencies or findings of noncompliance. It is defined in the manner that conforms to the applicable federal law and states the basic requirement of good standing for any entity wishing to do business with the department. The requirement that an entity be in good standing with the department will ensure that the department enhances existing sources of revenue; that it maximizes the generation of revenue from existing assets of the department; and, that it increases the role of local and regional leaders in solving the state's transportation problems by rewarding those entities in good standing.

The term "eligible project" is defined as highway, rail, transit, bicycle or pedestrian projects, as authorized by Title 23, USC, other than the emergency relief programs authorized by §125, and Title 49, Chapter 53, USC, as amended by SAFETEA-LU. This is consistent with the department's plan to encourage development of new mobility opportunities and transportation solutions that will enhance transportation by roads and highways or serve as an alternate to traditional modes of transportation.

The term "locally earned credits" is defined as transportation development credits earned from a project of a regional tollway authority; a project of a county acting under Transportation Code, Chapter 284; a project of a regional mobility authority; an international bridge not owned by the state; and a department project located within the geographic area of a regional mobility authority that has developed one or more toll projects. This reflects the department's goal to empower local and regional leaders to solve local and regional transportation problems, and to reward local and regional efforts to solve transportation problems.

The term "transportation development credits" is defined as a financing tool approved by the Federal Highway Administration (FHWA) that allows states to use their federal obligation authority without the requirement of non-federal matching dollars. Credits are earned when the state, a toll authority, or a private entity funds a capital transportation investment with toll revenues earned on existing toll facilities, excluding revenues needed for debt service, returns to investors or the operation and maintenance of toll facilities. The term describes a financing tool, formerly called toll credits, that allows states to use their federal obligation authority without the requirement of non-federal matching dollars, thus increasing the flexibility of the resources available to the department as well as the department's local and regional partners.

New §5.72, describes the competitive process by which the commission will award 75% of the state's locally earned transportation development credits. The commission has expressed its intention to empower local and regional leaders to solve local and regional transportation problems.

Section 5.72(d), Program call, describes the manner in which the department will solicit proposals for the competitive award of credits by periodically publishing a solicitation notice in the *Texas Register*.

Section 5.72(e), Proposal, describes the requirements of a proposal submitted in response to a solicitation published by the department. The plan has five goals: 1) reduce congestion; 2) enhance safety; 3) expand economic opportunity; 4) improve air quality; and, 5) increase the value of transportation assets. The plan is based on four strategies: 1) use all financial options to build transportation projects; 2) empower local and regional leaders to solve local and regional transportation problems; 3) increase competitive pressure to drive down the cost of transportation projects; and, 4) demand consumer driven decisions that respond to traditional market forces. The proposal must provide a detailed description of the need for the project and how the award of transportation development credits for the project will meet the requirements of the commission's plan for statewide transportation.

Section 5.72(f), Award, describes the manner in which the commission will consider proposals and projects submitted in response to a published notice soliciting proposals. The subsection enumerates the criteria that the commission will use in awarding transportation development credits in a manner that expands the availability of funding for transportation projects, reduces congestion, expands economic opportunity, enhances safety, improves air quality and increases the value of transportation assets. The subsection reflects how the commission will reward local and regional efforts to help the department complete transportation projects faster and to help the department's efforts to reduce congestion, enhance safety, expand economic opportunity, improve air quality, and increase the value of transportation assets. Section 5.72(f) also adds the requirement that the local and regional leaders must coordinate proposals and proposed projects with the local metropolitan planning organization if the project falls within the boundaries of the metropolitan planning organization for the purpose of obtaining the organization's concurrence on the proposal or proposed project. The requirement for metropolitan planning organization concurrence will demonstrate to the commission that the project has regional support.

Section 5.72(g), Unused credits, describes how the commission will determine if credits are being utilized in a manner that maxi-

mizes the value of the credits for the benefit of the department's statewide transportation plan. Any transportation development credits that cannot be awarded to a region due to a lack of eligible projects or credits that have been previously awarded, but after one year are not covered under an executed project agreement, shall be available for discretionary award by the commission. This requirement is consistent with the commission's statutory obligation to enhance existing sources of revenue and to create alternate sources of revenue that can be applied to transportation projects.

New §5.73, Discretionary award, describes the process by which the commission will make discretionary awards of transportation development credits. By maintaining discretionary control over 25% of the available locally earned transportation development credits, the commission will be able to exercise its role as the state's leader in the plan to resolve the state's transportation problem and to maintain its responsibility to plan and approve transportation projects that will benefit the entire state.

Section 5.73(b), Award, describes the commission's discretionary award of credits and is consistent with the same criteria used to make transportation development credit award determinations for the competitive process. The subsection also adds the requirement that the local and regional leaders must coordinate proposals and proposed projects with the local metropolitan planning organization if the project falls within the boundaries of the metropolitan planning organization for the purpose of obtaining the organization's expressed opinion on the proposal or proposed project.

Section 5.73(c), Unused credits, states that if an entity awarded credits does not sign the required agreement within one year of award, the commission may award those credits to another entity.

New §5.74, Administration, states that an entity awarded transportation development credits shall enter into a project agreement with the department and shall comply with other requirements specified by the executive director. These requirements are consistent with the department's other requirements related to doing business with the department.

COMMENTS

The department received comments from four entities. All four commenters expressed general support for the rules as proposed.

The first commenter only expressed general support for the rules as proposed.

The second commenter also expressed general support for the rules as proposed and in addition made specific suggestions for revision of the rules.

Comment:

The commenter suggested expanding the list of eligible projects listed in §5.72(c), Eligible project, to include projects that better meet the goals stated by the Texas Transportation Commission, specifically to include air quality projects.

Response:

The department agrees with the commenter and has added a sentence to §5.72(c), stating that an air quality improvement initiative or project will only be eligible for award of transportation development credits in the department's competitive call if the proposer is able to demonstrate that the project is located in an

area currently in nonattainment with federal air quality standards; that the project will solve specific traffic congestion problems, in a manner other than adding additional capacity to highways for single occupant vehicles and that the project will decrease mobile source emissions and reduce vehicle miles traveled, as reflected by the region's economic growth, land use, and transportation infrastructure changes. This addition to the rule will better reflect the department's goals and its strategic plan for fiscal years 2005-2009.

Comment:

The commenter also suggested including specific timeframes (annually, semiannually) for publication of credits earned in the state and credits earned in each region; and the commenter suggested further definition of a schedule for the call for projects proposed in §5.72(d), Program Call, for advance planning purposes.

Response:

The department agrees to consider implementation of these suggestions, but no revision was made to the rule as a result of the comment.

Comment: A public hearing on the rules was held on March 31, 2006 and two speakers presented comments. Both commenters expressed support for the rules. No responses to comments were made at the public hearing.

The first speaker wanted to make sure that vehicle preventive maintenance is eligible for transportation development credits. The speaker further stated that the proposed 75/25 split may need to be changed, to leave more of the award of credits to the discretion of the commission.

The second speaker expressed support for the rules and further commented that the commission should consider awarding transportation development credits to transit operators which received congressional earmarks, because the credits are a good way of leveraging federal funds. The speaker also presented a concern that the award of transportation development credits would be overly-subjective and stated that transit projects should get due consideration.

Response: The department's rule makes it clear that transit entities, authorized to receive funding by Chapter 53 of Title 49 U.S. Code, are eligible for award of transportation development credits and that capital expenses, as defined by Chapter 31 of this title, are projects that are eligible for award of transportation development credits.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101.

§5.72. *Competitive Process.*

(a) Purpose. The commission will award 75% of the state's locally earned credits in accordance with this section.

(b) Awarding credits to region. Except as provided in subsection (g) of this section, the commission will award credits under this section to projects within the region from which they were earned. For purposes of this section, "region" means the planning boundaries of the metropolitan planning organization.

(c) Eligible project. A highway project is not eligible for award under this section unless the proposer demonstrates that the project provides direct support of a rail, transit, bicycle, pedestrian project or will improve air quality. An air quality project is not eligible for award under this section unless the proposer demonstrates that the project is located in an area currently in nonattainment with federal air quality standards; that the project will solve specific traffic congestion problems, in a manner other than adding additional highway capacity for single occupant vehicles; and that the project will decrease mobile source emissions and reduce vehicle miles traveled, as reflected by the region's economic growth, land use, and transportation infrastructure changes.

(d) Program call. The department will periodically publish a notice in the *Texas Register* soliciting proposals for the award of transportation development credits under this section.

(e) Proposal.

(1) An eligible entity may submit a proposal for an eligible project in response to a notice published under subsection (d) of this section. The proposal must include a detailed description of:

(A) the project and the need for the project;

(B) how the award of transportation development credits will expand the availability of funding for transportation projects;

(C) how the project will:

(i) reduce congestion;

(ii) expand economic opportunity;

(iii) enhance safety;

(iv) improve air quality; and

(v) increase the value of transportation assets.

(2) If the project is located within the planning boundaries of a metropolitan planning organization, the eligible entity must obtain the concurrence of the metropolitan planning organization.

(3) The executive director may require supplemental information to clarify the issues described in paragraph (1) of this subsection.

(f) Award.

(1) The commission will not consider a project unless the project has been endorsed by the applicable metropolitan planning organization.

(2) The commission will award transportation development credits under this section after considering the potential of the project to:

(A) expand the availability of funding for transportation projects;

(B) reduce congestion;

(C) expand economic opportunity;

(D) enhance safety;

(E) improve air quality; and

(F) increase the value of transportation assets.

(g) Unused credits.

(1) If an entity awarded credits under this section does not sign an agreement under §5.74 of this subchapter (relating to Administration) within one year of award, unused credits shall be available for

discretionary award under §5.73 of this subchapter (relating to Discretionary Award).

(2) If, after three program calls, the department has not received enough eligible projects to use credits available to a region under this section, the unused credits shall be available for discretionary award under §5.73 of this subchapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602923

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: June 15, 2006

Proposal publication date: March 10, 2006

For further information, please call: (512) 463-8683



CHAPTER 31. PUBLIC TRANSPORTATION

The Texas Department of Transportation (department) adopts the repeal of §§31.3, 31.61, 31.62, 31.64, and 31.65 and simultaneously adopts new §§31.3, 31.61, and 31.62, concerning the rail fixed guideway system state safety oversight program without changes to the proposed text as published in the March 10, 2006, *Texas Register* (31 TexReg 1632) and will not be republished.

EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

The Federal Transit Administration (FTA) adopted new regulations governing Rail Fixed Guideway Systems, State Safety Oversight. The new regulations are published in Title 49 CFR Part 659 and are entitled: Rail Fixed Guideway Systems; State Safety Oversight. New provisions specify the department responsibility of adopting requirements that address the elements identified in 49 CFR Part 659. In accordance with the federal regulation, new adopted §31.3, §31.61 and §31.62 require the rail fixed guideway systems to adhere to the provisions outlined in the federal regulations.

In 1991, Congress required that the FTA establish a program providing for the state-conducted oversight of the safety and security of rail systems not regulated by the Federal Railroad Administration (FRA), by enacting a statute in Title 49 USC §5330. FTA published final regulations to implement the federal statute in 1995 and the final rule went into effect January 26, 1996. In 1997, the Texas Legislature enacted a state statute, Transportation Code, §455.005, requiring state compliance with Title 49 USC §5330. In enacting the state statute in May 1997, the Texas Legislature adopted the compliance requirements set out in the FTA regulations in effect at the time. The department adopted rules to further implement the statute in September 1997. The state statute states that its purpose is to ensure state compliance with the federal statute published in Title 49 USC §5330.

The FTA amended its regulations that implement the federal statute and published final regulations on April 29, 2005. The final regulations became effective on May 31, 2005 and the date by which states are required to comply is May 1, 2006.

FTA's new final regulations contain compliance requirements that are more stringent and more specific than the requirements stated in its former regulations. The regulations are more specific in that the FTA no longer requires compliance with standards published in a transportation association manual, rather the new rule enumerates the specific compliance standards.

The department adopts the repeal of §31.3 and simultaneously adopts new §31.3 in a revised form. New §31.3, Definitions, adopts new terms that match terms used in the new federal regulations.

The new federal regulations spell out the requirements formerly stated in the American Public Transportation Association (APTA) Manual and guidelines, instead of incorporating the requirements by reference. The FTA determined that it is in the interest of users to publish all of the provisions of the APTA Manual in the state safety oversight regulation, so reference to APTA guidelines must be deleted. The new federal regulations were intended to improve the performance of the State Safety Oversight Program and to ensure the following outcomes: (1) enhance program efficiency; (2) increase responsiveness to recommendations from the National Transportation Safety Board (NTSB) and emerging safety and security issues; (3) improve consistency in the collection and analysis of accident causal factors through increased coordination with other federal reporting and investigation programs; and (4) improve performance of the hazard management process. The regulation also clarifies FTA's oversight management objectives, and streamlines current reporting requirements. The regulations also address heightened concerns for rail transit security and emergency preparedness.

Terms no longer used in the federal regulations include references to "APTA," "hazardous condition," and "unacceptable hazardous condition," as those terms were used in the manual. New provisions are adopted in order for the state to comply with the federal statute and the regulations that implement the statute. New terms and definitions are included to reflect the new federal regulations: "corrective action plan," "FRA," "hazard," "individual," "investigation," "new starts project," "passenger operations," "program standard," "rail accident," "rail transit accident," "rail transit contractor," "rail transit controlled property," "rail transit fixed guideway system," "rail transit passenger," "rail transit vehicle," "security," "system safety program plan," and "system security plan." The definitions have been renumbered to reflect the deletions and additions detailed above.

The department adopts the repeal of §31.61 and simultaneously adopts new §31.61 in a revised form. New §31.61, Rail Transit Agency Responsibilities, adopts new provisions to comply with the federal regulations published in 49 CFR Part 659.

New §31.61(a) sets out the requirements for each rail transit agency to develop and implement a system safety program that complies with the federal regulations. Rail transit agencies are required to develop and maintain a separate system safety program plan that complies with the requirements specified in the federal regulations.

New §31.61(b) sets out the requirements for each rail transit agency to develop and implement a system security plan that complies with the new federal regulations.

New §31.61(c) requires each rail transit agency to perform an annual review of its system safety program and its system security plan that complies with the new federal regulations.

New §31.61(d) requires the rail transit authority to maintain ongoing internal safety and security reviews that complies with the new federal regulations.

New §31.61(e) requires the rail transit agency to develop and document a hazard management process that complies with the new federal regulations. The rail transit agency hazard management process must be part of its system safety program plan, to be reviewed and approved by the department. The rail transit agency must develop, in coordination with the department, thresholds for the notification and reporting of hazards to the department. Measures to eliminate or control hazards and the associated corrective actions are to be managed through the hazard management process, including rail transit agency procedures for providing the department with reports to track mitigation. The rail transit agency's hazard management process must include, at a minimum, a definition of the rail transit agency's approach to the hazard management and resolution process, a list of the sources and mechanisms used to support the ongoing identification of hazards, the process by which identified hazards will be evaluated and prioritized for elimination or control, the mechanism used to track identified hazards to resolution, and the process for ongoing reporting of hazard resolution activities to the department.

New §31.61(f) requires the rail transit agency to notify the department of accidents, including a fatality, injuries requiring immediate medical attention and property damage, in accordance with federal regulations. FTA has modified the thresholds for the notification and investigation of accidents. Rail transit agencies are required to report the occurrence of accidents within two (2) hours. In those instances where the rail transit agency shares track with the general railroad system and is subject to FRA notification requirements, the rail transit agency must notify the department within two (2) hours of an incident for which FRA is notified. The department must investigate, or cause to be investigated, all accidents meeting the notification and investigation thresholds.

New §31.61(g) requires the transit agency to develop and implement corrective action plans that comply with the new federal regulations. The department must review and approve all procedures, except those used by the NTSB that will be used to conduct an investigation on its behalf. The rail transit agency is required to develop corrective action plans to address findings from accidents and the department's three-year safety and security review. In the case of accident investigations, the department is responsible for ensuring that a corrective action plan is developed, implemented, and tracked, regardless of the entity that conducts the investigation on the state's behalf. The provisions identify a dispute resolution process for matters related to corrective action plan requirements.

The provisions in §31.62, State Responsibilities, are repealed because they set out the department's responsibilities for reporting and compliance with the new federal regulations, in 49 CFR Part 659. The provisions state internal requirements for the department and are therefore not required to be adopted as a rule.

The department adopts the repeal of §31.64, Contractors for Rail Fixed Guideway Transit Agencies, because the provisions covered under this section are now listed in the elements contained in 49 CFR Part 659 and the requirements are reflected under the new adopted §31.61.

The department adopts the repeal of §31.65, Deadlines, and simultaneously adopts new §31.62, Deadlines, reflecting the re-

quirements outlined in the new federal regulations, 49 CFR Part 659.

COMMENTS

No comments on the proposed repeals and new sections were received.

SUBCHAPTER A. GENERAL

43 TAC §31.3

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §455.005, which requires the commission to adopt rules governing rail fixed guideway system safety oversight.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101 and §455.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602924

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: June 15, 2006

Proposal publication date: March 10, 2006

For further information, please call: (512) 463-8683



43 TAC §31.3

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §455.005, which requires the commission to adopt rules governing rail fixed guideway system safety oversight.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101 and §455.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602925

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: June 15, 2006

Proposal publication date: March 10, 2006

For further information, please call: (512) 463-8683



SUBCHAPTER F. RAIL SAFETY OVERSIGHT PROGRAM

43 TAC §§31.61, 31.62, 31.64, 31.65

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §455.005, which requires the commission to adopt rules governing rail fixed guideway system safety oversight.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101 and §455.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602926

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: June 15, 2006

Proposal publication date: March 10, 2006

For further information, please call: (512) 463-8683



SUBCHAPTER F. RAIL FIXED GUIDEWAY SYSTEM STATE SAFETY OVERSIGHT PROGRAM

43 TAC §31.61, §31.62

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §455.005, which requires the commission to adopt rules governing rail fixed guideway system safety oversight.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.101 and §455.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2006.

TRD-200602927

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: June 15, 2006

Proposal publication date: March 10, 2006

For further information, please call: (512) 463-8683



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (Division) files this notice of intention to review the rules contained in Chapter 114, concerning Self-Insurance. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

- §114.1. Purpose.
- §114.2. Definitions.
- §114.3. Application Form and Financial Information Requirements.
- §114.4. Security Deposit Requirements.
- §114.5. Excess Insurance Requirements.
- §114.6. Safety Program Requirements.
- §114.7. Certification Process.
- §114.8. Refusal To Certify an Employer.
- §114.9. Required Safety Program Inspections.
- §114.10. Claims Contractor Requirements.
- §114.11. Audit Program.
- §114.12. Required Reporting.
- §114.13. Required Notices to the Director.
- §114.14. Impaired Employer.
- §114.15. Revocation or Suspension of Certificate of Authority To Self-Insure.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 10, 2006 and submitted to Kristi Dowding, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200602956

Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: May 31, 2006



The Texas Department of Insurance, Division of Workers' Compensation (Division) files this notice of intention to review the rules contained in Chapter 120, concerning Compensation Procedure--Employers. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

- §120.1. Employer's Record of Injuries.
- §120.2. Employer's First Report of Injury.
- §120.3. Employer's Supplemental Report of Injury.
- §120.4. Employer's Wage Statement.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 10, 2006 and submitted to Kristi Dowding, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200602957
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: May 31, 2006



The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 126 concerning General Provisions Applicable to All Benefits. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

- §126.1. Definitions Applicable to All Benefits.
- §126.2. Payment of Benefits to Minors.

- §126.3. Payment of Benefits to Legally Incompetent Persons.
- §126.4. Advance of Benefits Based on Financial Hardship.
- §126.5. Entitlement and Procedure for Requesting Required Medical Examinations.
- §126.6. Order for Required Medical Examination.
- §126.7. Suspension of Temporary Income Benefits Based on the Opinion of a Carrier-Selected Required Medical Examination Doctor.
- §126.8. Commission Approved Doctor List.
- §126.9. Choice of Treating Doctor and Liability for Payment.
- §126.11. Extension of the Date of Maximum Medical Improvement for Spinal Surgery.
- §126.12. Payment of Interest on Accrued but Unpaid Income Benefits.
- §126.13. Employer Intention of Benefits and Reimbursement.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 10, 2006 and submitted to Kristi Dowding, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200602958
 Norma Garcia
 General Counsel
 Texas Department of Insurance, Division of Workers' Compensation
 Filed: May 31, 2006



The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 128 concerning Benefits--Calculation of Average Weekly Wage. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

- §128.1. Average Weekly Wage: General Provisions.
- §128.2. Carrier Presumption of Employee's Average Weekly Wage.
- §128.3. Average Weekly Wage Calculation for Full-Time Employees, and for Temporary Income Benefits for All Employees.
- §128.4. Average Weekly Wage Calculation for Part-Time Employees.
- §128.5. Average Weekly Wage Calculation for Seasonal Employees.

- §128.6. Average Weekly Wage, Adjustment for Certain Employees Who are Also Minors, Apprentices, Trainees, or Students.
- §128.7. Average Weekly Wage for School District Employees.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 10, 2006 and submitted to Kristi Dowding, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200602959
 Norma Garcia
 General Counsel
 Texas Department of Insurance, Division of Workers' Compensation
 Filed: May 31, 2006



Texas Board of Pardons and Paroles

Title 37, Part 5

Under the 1997 General Appropriations Act, Article IX, Section 167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 145 (Parole) Subchapter A (Parole Process).

The Board undertakes its review pursuant to Government Code, §2001.039. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by E-mail to laura.mcelroy@tdcj.state.tx.us.

TRD-200602920
 Laura McElroy
 General Counsel
 Texas Board of Pardons and Paroles
 Filed: May 26, 2006



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

ADVANCED (LEVEL III) TRAUMA FACILITY CRITERIA

Advanced Trauma Facility (Level III) - provides resuscitation, stabilization, and assessment of injury victims and either provides treatment or arranges for appropriate transfer to a higher level designated trauma facility; provides ongoing educational opportunities in trauma related topics for health care professionals and the public; and implements targeted injury prevention programs (see attached standards). The administrative commitment of a Level III trauma facility includes developing processes that define the trauma patient population evaluated by the facility and track them throughout the course of their stay in order to maximize funding opportunities.

A. TRAUMA PROGRAM	
1. Trauma Service.	E
2. An identified Trauma Medical Director (TMD) who: <ul style="list-style-type: none"> ▪ is a general surgeon. ▪ is currently credentialed in Advanced Trauma Life Support (ATLS) or an equivalent course approved by the Department of State Health Services (DSHS). ▪ is charged with overall management of trauma services provided by the hospital. ▪ shall have the authority and responsibility for the clinical oversight of the trauma program. This is accomplished through mechanisms that may include: recommending trauma team privileges; developing treatment protocols; cooperating with the nursing administration to support the nursing needs of the trauma patients; coordinating the performance improvement (PI) peer review; correcting deficiencies in trauma care or excluding from trauma call those trauma team members who do not meet criteria; coordinating the budgetary process for the trauma program; and should include such things as periodic rounds on all admitted major or severe trauma patients, chairing the trauma PI process and oversight of multidisciplinary trauma conferences. a. The TMD shall be credentialed by the hospital to participate in the resuscitation and treatment of trauma patients using criteria to include such things as board-certification/board-eligibility, trauma continuing medical education, compliance with trauma protocols, and participation in the trauma PI program. b. There shall be a defined job description and organizational chart delineating the TMD's role and responsibilities. c. The TMD shall participate in a leadership role in the hospital, community, and emergency management (disaster) response committee. d. The TMD should participate in the development of the regional trauma system plan. 	E
3. An identified Trauma Nurse Coordinator/Trauma Program Manager (TNC/TPM) who: <ul style="list-style-type: none"> ▪ is a registered nurse. ▪ has successfully completed and is current in the Trauma Nurse Core Course (TNCC) or Advanced Trauma Course for Nurses (ATCN) or a DSHS-approved equivalent. ▪ has successfully completed and is current in a nationally recognized pediatric advanced life support course ((e.g. Pediatric Advanced Life Support (PALS) or the Emergency Nurse Pediatric Course (ENPC)). ▪ shall have the authority and responsibility to monitor trauma patient care from ED admission through operative intervention(s), ICU care, stabilization, rehabilitation care, and discharge, including the trauma PI program. 	E

<ul style="list-style-type: none"> a. There shall be a defined job description and organizational chart delineating the TNC/TPM's role and responsibilities. b. The TNC/TPM shall participate in a leadership role in the hospital, community, and regional emergency management (disaster) response committee. c. This position shall be full-time with a minimum of 80% of the time dedicated to the Trauma program. d. The TNC/TPM should complete a course designed for his/her role which provides essential information on the structure, process, organization and administrative responsibilities of a PI program to include a trauma outcomes and performance improvement course ((e.g. Trauma Outcomes Performance Improvement Course (TOPIC) or Trauma Coordinators Core Course (TCCC)). 	
4. There shall be an identified Trauma Registrar, who is separate from but supervised by the TNC/TPM, who has appropriate training ((e.g. the Association for the Advancement of Automotive Medicine (AAAM) course, American Trauma Society (ATS) Trauma Registrar Course)) in injury severity scaling. Typically, one full-time equivalent (FTE) employee dedicated to the registry shall be required to process approximately 500 patients annually.	E
5. Written protocols, developed with approval of the hospital's medical staff, for: <ul style="list-style-type: none"> a. Trauma team activation. b. Identification of trauma team responsibilities during a resuscitation. c. Resuscitation and treatment of trauma patients. d. Triage, admission and transfer of trauma patients. 	E
6. All major and severe trauma patients shall be admitted to an appropriate surgeon and all multi-system trauma patients shall be admitted to a general surgeon.	E

B. PHYSICIAN SERVICES

1. SURGERY DEPARTMENTS/DIVISIONS/SERVICES/SECTIONS	
a. General Surgery	E
<p>A general surgeon who is providing trauma coverage shall be currently credentialed in ATLS or an equivalent course approved by DSHS.</p> <p>A general surgeon who is providing trauma coverage shall be credentialed by the TMD to participate in the resuscitation and treatment of trauma patients to include requirements such as current board certification/eligibility, an average of 9 hours of trauma-related continuing medical education per year, compliance with trauma protocols, and participation in the trauma PI program. Additionally, the core attending general surgeons that are providing coverage shall attend 50% or greater of multidisciplinary and peer review trauma committee meetings.</p> <p>A non-board certified general surgeon desiring inclusion in a hospital's trauma program shall meet the American College of Surgeons (ACS) guidelines as specified in its most current version of the "Resources For Optimal Care Of the Injured Patient", Alternate Criteria section.</p> <p>Communication shall be such that the attending general surgeon shall be present in the ED at the time of arrival of the major or severe trauma patient; maximum response time of the attending surgeon shall be 30 minutes from trauma team activation. This system shall be continuously monitored by the trauma PI program.</p>	E

<p>In hospitals with surgical residency programs, evaluation and treatment may be started by a team of surgeons that shall include a PGY4 or more senior surgical resident who is a member of that hospital's residency program. The attending surgeon's participation in major therapeutic decisions, presence in the emergency department for major resuscitations, and presence at operative procedures are mandatory. Compliance with these criteria and their appropriateness shall be monitored by the trauma PI program.</p> <p>When the attending surgeon is not activated initially and it has been determined by the emergency physician that an urgent surgical consult is necessary, maximum response time of the attending surgeon shall be 60 minutes from notification to physical presence at the patient's bedside. This system shall be continuously monitored by the trauma PI program.</p> <p>There shall be a published on-call schedule for obtaining general surgery care. There shall be a documented system for obtaining general surgical care for situations when the attending general surgeon on-call is unavailable. Ideally, the surgeon is on-call only at one institution; otherwise, a published back-up call schedule shall be in place in the emergency department. This system shall be continuously monitored by the trauma PI program.</p>	
<p>b. Orthopaedic Surgery</p>	<p>E</p>
<p>An orthopaedic surgeon who is providing trauma coverage shall be credentialed by the TMD to participate in the resuscitation and treatment of trauma patients to include requirements such as current board certification/eligibility, compliance with trauma protocols, and participation in the trauma PI program. Additionally, the orthopaedic surgeon representative to the multidisciplinary trauma committee shall have an average of 9 hours of orthopaedic-related continuing medical education per year and attend 50% or greater of multidisciplinary and peer review trauma committee meetings.</p> <p>A non-board certified orthopaedic surgeon desiring inclusion in a hospital's trauma program shall meet ACS guidelines as specified in its current addition of "Resources For Optimal Care Of the Injured Patient", Alternate Criteria section.</p> <p>An orthopaedic surgeon providing trauma coverage shall be promptly available (physically present) at the major or severe trauma patient's bedside within 30 minutes of request by the attending trauma surgeon or emergency physician from inside or outside hospital. This system shall be continuously monitored by the trauma PI program.</p> <p>When the orthopaedic surgeon is not activated initially and it has been determined by the emergency physician or trauma surgeon that an urgent surgical consult is necessary, maximum response time of the orthopaedic surgeon shall be 60 minutes from notification to physical presence at the patient's bedside. This system shall be continuously monitored by the trauma PI program.</p> <p>There shall be a published on-call schedule for obtaining orthopaedic surgery care. There shall be a documented system for obtaining orthopaedic surgery care for situations when the attending orthopaedic surgeon on call is unavailable. Ideally, the orthopaedic surgeon is on-call only at one institution; otherwise, a published back-up plan shall be in place in the emergency department. This system shall be continuously monitored by the trauma PI program.</p>	<p>E</p>
<p>c. Neurosurgery</p> <p>*Neurosurgery coverage is desired in a level III, but these criteria are "essential" when a Level III has either full-time, routine or limited neurosurgical coverage.</p>	<p>D*</p>

<p>A neurosurgeon who is providing trauma coverage shall be credentialed by the TMD to participate in the resuscitation and treatment of trauma patients to include requirements such as current board certification/eligibility, compliance with trauma protocols, and participation in the trauma PI program. Additionally, the neurosurgeon representative to the multidisciplinary trauma committee shall have an average of 9 hours of trauma-related continuing medical education per year and attend 50% or greater of multidisciplinary and peer review trauma committee meetings.</p> <p>A non-board-certified neurosurgeon desiring inclusion in a hospital's trauma program shall meet ACS guidelines as specified in its current addition of "Resources For Optimal Care Of the Injured Patient", Alternate Criteria section.</p> <p>A neurosurgeon providing trauma coverage shall be promptly available (physically present) at the major or severe trauma patient's bedside within 30 minutes of an emergency request by the attending trauma surgeon or emergency physician from inside or outside hospital. This system shall be continuously monitored by the trauma PI program.</p> <p>When the neurosurgeon is not activated initially or was not consulted as an emergency and it has been determined by the emergency physician or trauma surgeon that an urgent neurosurgical consult is necessary, maximum response time of the neurosurgeon surgeon shall be 60 minutes from notification to physical presence at the patient's bedside. This system shall be continuously monitored by the trauma PI program.</p> <p>There shall be a published on-call schedule for obtaining neurosurgical care. There shall be a documented system for obtaining neurosurgical care for situations when neurosurgeon on-call is not available. Ideally, the neurosurgeon is on-call only at one institution; otherwise, a published back-up plan shall be in place in the emergency department. This system shall be continuously monitored by the trauma PI program.</p>	E
d. Ophthalmic Surgery	D
e. Otorhinolaryngologic Surgery	D
f. Thoracic Surgery	D
g. Urologic Surgery	D
2. NON-SURGICAL SPECIALTIES AVAILABILITY	
<p>a. Emergency Medicine - this requirement may be fulfilled by a physician credentialed by the hospital to provide emergency medical services.</p> <p>In-house 24 hours a day.</p> <p>Any emergency physician who is providing trauma coverage shall be credentialed by the TMD to participate in the resuscitation and treatment of trauma patients of all ages to include requirements such as current board certification/eligibility, compliance with trauma protocols, and participation in the trauma PI program. Additionally, the Emergency Medicine representative to the multidisciplinary trauma committee shall have an average of 9 hours of trauma-related continuing medical education per year and attend 50% or greater of multidisciplinary and peer review trauma committee meetings.</p> <p>An Emergency Medicine board-certified physician who is providing trauma coverage shall have successfully completed an ATLS Student Course or a DSHS-approved ATLS equivalent course.</p> <p>Current ATLS verification is required for all physicians who work in the emergency department and are not board certified in Emergency Medicine.</p>	E
b. Radiology - On-call and promptly available within 30 minutes of request from inside or outside the hospital. This system shall be continuously monitored by the trauma PI program.	E
c. Anesthesiology - On-call and promptly available within 30 minutes of request from inside or outside the hospital. This system shall be continuously monitored by the trauma PI program.	E

Requirements may be fulfilled by a member of the anesthesia care team credentialed by the TMD to participate in the resuscitation and treatment of trauma patients that may include requirements such as board certification, trauma continuing education, compliance with trauma protocols, and participation in the trauma PI program. The anesthesiology physician representative to the multidisciplinary trauma committee that provides trauma coverage to the facility shall attend 50% or greater of multidisciplinary and peer review trauma committee meetings.	
d. Cardiology	D
e. Hematology	D
f. Nephrology	D
g. Pathology	D
h. Family Medicine - The patient's primary care physician should be notified at an appropriate time.	D
i. Internal Medicine - The patient's primary care physician should be notified at an appropriate time.	D
j. Pediatrics - The patient's primary care physician should be notified at an appropriate time.	D

C. NURSING SERVICES (for all Critical Care and Patient Care Areas)	
1. All nurses caring for trauma patients throughout the continuum of care have ongoing documented knowledge and skill in trauma nursing for patients of all ages to include trauma specific orientation, annual clinical competencies, and continuing education.	E
2. Written standards on nursing care for trauma patients for all units (i.e. ED, ICU, OR, PACU, general wards) in the trauma facility shall be implemented.	E
3. A validated acuity-based patient classification system is utilized to define workload and number of nursing staff to provide safe patient care for all trauma patients throughout their hospitalization.	E
4. A written plan, developed by the hospital, for acquisition of additional staff on a 24 hour basis to support units with increased patient acuity, multiple emergency procedures and admissions (i.e. written disaster plan.)	E
5. 50% of nurses caring for trauma patients certified in their area of specialty (e.g. CEN, CCRN, CNOR.)	D

D. PATIENT CARE AREAS/UNITS	
1. EMERGENCY DEPARTMENT	
a. Designated physician director.	E
b. Physician with special competence in the care of critically injured patients, who is designated member of the trauma team and physically present in the emergency department (ED) 24 hours per day.* *Neither a hospital's telemedical capabilities nor the physical presence of physician assistants (PAs) or clinical nurse specialists/nurse practitioners (CNSs/NPs) shall satisfy this requirement. Additionally, PAs/NPs and telemedicine-support physicians who participate in the care of major/severe trauma patients shall be credentialed by the hospital to participate in the resuscitation and treatment of said trauma patients, to include requirements such as board certification/eligibility, an average of 9 hours of trauma-related continuing medical education per year, compliance with trauma protocols, and participation in the trauma performance improvement program.	E
c. The ED physician shall be activated on EMS communication with the ED or after a primary assessment of patients who arrive to the ED by private vehicle for the severe or major trauma patient. Response time shall not exceed thirty minutes from notification (this criterion shall be monitored in the trauma PI program.)	E
d. A minimum of two registered nurses who have trauma nursing training shall participate in initial major trauma resuscitation.	E

e. Nurse staffing in the initial resuscitation area is based on patient acuity and trauma team composition is based on historical census and acuity data	E
f. At least one member of the registered nursing staff responding to the trauma team activation for a major or severe trauma resuscitation has successfully completed and holds current credentials in an advanced cardiac life support course* (e.g. ACLS or hospital equivalent), a nationally recognized pediatric advanced life support course (e.g. PALS or ENPC) and TNCC or ATCN or a DSHS-approved equivalent. *A free-standing children's facility is exempt from the ACLS requirement.	E
g. Nursing documentation for trauma patients is systematic and meets the trauma registry guidelines.	E
h. 100% of nursing staff have successfully completed and hold current credentials in an advanced cardiac life support course (e.g. ACLS or hospital equivalent), a nationally recognized pediatric advanced life support course (e.g. PALS or ENPC) and TNCC or ATCN or a DSHS-approved equivalent, within 18 months of date of employment in the ED or date of designation.** **Requirements for a free-standing children's facility: 100% of nursing staff who care for trauma patients have successfully completed and hold current credentials in ENPC or in a nationally recognized pediatric advanced life support course and TNCC or ATCN or a DSHS-approved equivalent, within 18 months of date of employment in the ED or date of designation.	E
i. Two-way communication with all pre-hospital emergency medical services vehicles.	E
j. Equipment and services for the evaluation and resuscitation of, and to provide life support for, critically or seriously injured patients of all ages shall include but not be limited to:	E
1) Airway control and ventilation equipment including laryngoscope and endotracheal tubes of all sizes, bag-valve-mask devices (BVMs), pocket masks, oxygen	E
2) Mechanical ventilator	E
3) Pulse oximetry	E
4) Suction devices	E
5) Electrocardiograph-oscilloscope-defibrillator	E
6) Internal age-specific paddles	E
7) Supraglottic airway management device (e.g. LMA)	D
8) Central venous pressure monitoring equipment	E
9) All standard intravenous fluids and administration devices, including large-bore intravenous catheters and a rapid infuser system	E
10) Sterile surgical sets for procedures standard for emergency room such as thoracostomy, venous cutdown, central line insertion, thoracotomy, diagnostic peritoneal lavage, airway control/cricothyrotomy, etc.	E
11) Drugs and supplies necessary for emergency care	E
12) Cervical spine stabilization device	E
13) Length-based body weight & tracheal tube size evaluation system (such as Broselow tape) and resuscitation medications and equipment that are dose-appropriate for all ages	E
14) Long bone stabilization device	E
15) Pelvic stabilization device	E
16) Thermal control equipment for patients and a rapid warming device for blood and fluids	E
17) Non-invasive continuous blood pressure monitoring devices	E
18) Qualitative end tidal CO ₂ monitor	E

k. X-ray capability.	E
1) In-house technician 24-hours a day or on-call and promptly available within 30 minutes of request. This system shall be continuously monitored by the trauma PI program.	E
1. Psychosocial Support Services - These services shall be promptly available within 30 minutes of request.	D
2. OPERATING SUITE	
a. Operating room services - shall be available 24 hours a day. With advanced notice, the Operating Room should be opened and ready to accept a patient within 30 minutes. This system shall be continuously monitored by the trauma PI program.	E
b. Equipment - special requirements shall include but not be limited to:	E
1) Thermal control equipment for patient and for blood and fluids	E
2) X-ray capability including c-arm image intensifier with technologist available 24 hours a day	E
3) Endoscopes, all varieties, and bronchoscope	E
4) Equipment for long bone and pelvic fixation	E
5) Rapid infuser system	E
6) Appropriate monitoring and resuscitation equipment	E
7) The capability to measure pulmonary capillary wedge pressure	E
8) The capability to measure invasive systemic arterial pressure	E
3. POST-ANESTHESIA CARE UNIT (surgical intensive care unit is acceptable)	
a. Registered nurses and other essential personnel 24 hours a day.	E
b. Appropriate monitoring and resuscitation equipment.	E
c. Pulse oximetry.	E
d. Thermal control equipment for patients and a rapid warming device for blood and fluids.	E
4. INTENSIVE CARE CAPABILITY	
a. Designated surgical director or surgical co-director who is responsible for setting policies and administration related to trauma ICU patients.	E
A physician who is providing this coverage must be a surgeon who is credentialed by the TMD to participate in the resuscitation and treatment of trauma patients to include requirements such as board certification/board-eligibility, trauma continuing medical education, compliance with trauma protocols, and participation in the trauma PI program.	E
b. Physician, credentialed in critical care by the trauma director, on duty in ICU 24 hours a day or immediately available from in-hospital. Arrangements for 24-hour surgical coverage of all trauma patients shall be provided for emergencies and routine care. This system shall be continuously monitored by the trauma PI program.	E
c. Registered Nurse-patient minimum ratio of 1:2 on each shift for patients identified as critical acuity.	E
d. Appropriate monitoring and resuscitation equipment.	E
e. Pulse oximetry.	E
f. Thermal control equipment for patients and a rapid warming device for blood and fluids.	E
g. The capability to measure pulmonary capillary wedge pressure.	E
h. The capability to measure invasive systemic arterial pressure.	E
E. CLINICAL SUPPORT SERVICES	
1. RESPIRATORY SERVICES	
In-house and available 24 hours per day.	E

2. CLINICAL LABORATORY SERVICE	
a. Services available 24 hours per day.	E
b. Standard analyses of blood, urine, and other body fluids, including microsampling.	E
c. Blood typing and cross-matching, to include massive transfusion and emergency release of blood policies.	E
d. Comprehensive blood bank or access to a community central blood bank and adequate hospital storage facilities.	E
e. Coagulation studies.	E
f. Blood gases and pH determinations.	E
g. Microbiology.	E
h. Drug and alcohol screening: results should be included in all trauma PI reviews.	E
i. Infectious disease Standard Operating Procedures.	E
j. Serum and urine osmolality.	D
3. SPECIAL RADIOLOGICAL CAPABILITIES	
a. Sonography.	E
b. Computerized tomography.	E
In-house CT technician 24-hours per day or on-call and promptly available within 30 minutes of request. This system shall be continuously monitored by the trauma PI program.	E
c. Angiography of all types.	D
d. Nuclear scanning.	D

F. SPECIALIZED CAPABILITIES/SERVICES/UNITS	
1. ACUTE HEMODIALYSIS CAPABILITY	
Transfer agreement if no capability.	E
2. ORGANIZED BURN CARE	
Established criteria for care of major or severe burn patients and/or a process to expedite the transfer of burn patients to a burn center or higher level of care to include such things as written protocols, written transfer agreements, and a regional trauma system transfer plan for patients needing a higher level of care or specialty services.	E
3. SPINAL CORD/HEAD INJURY REHABILITATION MANAGEMENT CAPABILITY	
a. In circumstances where a designated spinal cord injury rehabilitation center exists in the region, early transfer should be considered; transfer agreements should be in effect.	E
b. In circumstances where a moderate to severe head injury center exists in the region, transfer should be considered in selected patients; transfer agreements should be in effect.	E
4. REHABILITATION MEDICINE	
a. Physician-directed rehabilitation service, staffed by personnel trained in rehabilitation care and equipped properly for care of the critically injured patient, or transfer agreement when medically feasible to a rehabilitation facility and a process to expedite the transfer of rehabilitation patients to include such things as written protocols, written transfer agreements, and a regional trauma system transfer plan for patients needing a higher level of care or specialty services.	E
b. Physical therapy.	E
c. Occupational therapy.	E
d. Speech therapy.	E
e. Social Services.	E

G. PERFORMANCE IMPROVEMENT	
1. Track Record: On Initial Designation: a facility must have completed at least six months of audits on all qualifying trauma records with evidence of “loop closure” on identified issues. Compliance with internal trauma policies must be evident. On Re-designation: a facility must show continuous PI activities throughout its designation and a rolling current three year period must be available for review at all times.	E
2. Minimum inclusion criteria: All trauma team activations (including those discharged from the ED), all trauma deaths or dead on arrivals (DOAs), all major and severe trauma admissions for greater than 23 hours; transfers-in and transfers-out; and readmissions within 48 hours after discharge.	E
3. An organized trauma PI program established by the hospital, to include a pediatric-specific component and trauma audit filters (see "Advanced Trauma Facility Audit Filters" list.)	E
a. Audit of trauma charts for appropriateness and quality of care.	E
b. Documented evidence of identification of all deviations from trauma standards of care, with in-depth critical review.	E
c. Documentation of actions taken to address all identified issues.	E
d. Documented evidence of participation by the TMD.	E
e. Morbidity and mortality review including decisions by the TMD as to whether or not standard of care was met.	E
f. Documented resolutions “loop closure” of all identified issues to prevent future recurrences.	E
g. Special audit for all trauma deaths and other specified cases, including complications, utilizing age-specific criteria.	E
h. Multidisciplinary hospital trauma PI committee structure in place.	E
4. Multidisciplinary trauma conference for PI activities, continuing education and problem solving to include documented nurse and pre-hospital participation.	E
5. Regular and periodic multidisciplinary trauma conferences that include all members of the trauma team should be held. This conference shall be for the purpose of PI through critiques of individual cases.	E
6. Feedback regarding trauma patient transfers-in from EDs and in-patient units shall be provided to all transferring facilities.	E
7. Trauma registry - data shall be forwarded to the state trauma registry on at least a quarterly basis.	E
8. Documentation of severity of injury (by Glasgow Comma Scale, revised trauma score, age, injury severity score) and outcome (survival, length of stay, ICU length of stay) with monthly review of statistics.	E
9. Participation with the regional advisory council’s PI program, including adherence to regional protocols, review of pre-hospital trauma care, submitting data to the RAC as requested including such things as summaries of transfer denials and transfers to hospitals outside of the RAC.	E
10. Times of and reasons for diversion must be documented and reviewed by the trauma PI program.	E
11. Published on-call schedule must be maintained for general surgeons and neurosurgeons, orthopaedic surgeons, anesthesia, radiology, and other major specialists if available.	E
12. Performance improvement personnel - dedicated to and specific for the trauma program.	E

H. REGIONAL TRAUMA SYSTEM	
Must participate in the regional trauma system per RAC requirements.	E

I. TRANSFERS	
1. A process to expedite the transfer of applicable major and severe trauma patients to include such things as written protocols, written transfer agreements, and a regional trauma system transfer plan for patients needing higher level of care or specialty services.	E
2. A system for establishing an appropriate landing zone in close proximity to the hospital (if rotor wing services are available.)	E

J. OUTREACH PROGRAM	
1. Provide education to and consultations with physicians of the community and outlying areas.	E
2. A defined individual to coordinate the facility's community outreach programs for the public and professionals is evident.	E

K. PUBLIC EDUCATION/INJURY PREVENTION	
1. A public education program to address the major injury problems within the hospital's service area. Documented participation in a RAC injury prevention program is acceptable.	E
2. Coordination and/or participation in community/RAC injury prevention activities.	E

L. TRAINING PROGRAMS	
1. Formal programs in trauma continuing education provided by hospital for staff based on needs identified from the performance improvement program for:	E
a. Staff physicians	E
b. Nurses	E
c. Allied health personnel, including mid-level providers such as physician assistants and nurse practitioners	E
d. Community physicians	E
e. Pre-hospital personnel	E

M. RESEARCH	
Trauma registry performance improvement activities.	E

Advanced (Level III) Trauma Facility Standards

1. A Level III Trauma Facility shall be an active participant on the regional advisory council (RAC) of its trauma service area (TSA).
2. A Level III Trauma Facility is available to care for all major and severe trauma patients 24 hours per day/ 7 days per week. Diversion of such patients to other facilities should be made rarely and only when resources are not available in the emergency department (ED) to stabilize and transfer these patients.
3. A Level III trauma facility with specialized trauma capabilities may not refuse a request for a trauma transfer from another hospital if it has the capacity to accept. Specialized trauma capability is any capability necessary for screening or stabilizing patients with emergency medical conditions that the transferring hospital may lack. The only two reasons a Level III trauma facility may refuse a trauma transfer request are lack of capability to handle the patient's emergency condition or when it is at capacity.
4. A log of all trauma transfer-in denials shall be maintained, reviewed through the facility's trauma performance improvement (PI) process, and referred to the appropriate RAC's systems PI process.
5. A Level III trauma facility shall have an established relationship with tertiary trauma facility (ies) to which it transfers patients and with all designated Level IV trauma facilities that regularly initiate transfers-in, to include such things as:
 - written transfer agreements
 - prospective dialogue regarding appropriate pre-transfer diagnostic laboratory and radiological studies so that each is cognizant of the other's performance expectations
 - consideration of a single phone call transfer-request process
 - provision of feedback regarding transfers as part of the PI program
6. A Level III trauma facility shall have age-specific policies/processes that demonstrate knowledge of the special resources potentially needed by injured patients of all ages, and is cognizant of the pediatric capabilities of the hospitals to which it customarily effectuates transfers so that it can determine the most appropriate facility.
7. A Level III trauma facility shall have an established relationship with the EMS providers, who transport to the facility, to facilitate adequate pre-arrival notification, appropriate documentation, and appropriate pre-hospital care.
8. A Level III trauma facility shall present its pediatric capabilities to the RAC so that both EMS providers and other hospitals can determine the most appropriate facility to transport or transfer critically injured pediatric patients.
9. The patient shall be treated per established trauma care standards and protocols within the capability of the facility. A Level III trauma facility shall notify the regional emergency healthcare community when a usually-provided service, either "essential" or "desired", is not available.

Advanced (Level III) Trauma Facility Standards (cont.)

10. The major or severe trauma patient shall be met on arrival in the ED by a team of healthcare professionals as defined in the trauma activation protocols, credentialed by the hospital. The emergency physician shall direct the resuscitation until the arrival of the general surgeon.
11. Throughout their hospital stay, trauma patients shall be cared for by health care professionals with documented education and skill in the assessment and care of injuries.
12. The major or severe trauma patient shall be rapidly assessed, resuscitated, and stabilized according to established trauma management guidelines including ATLS, TNCC, ATCN, and ENPC.
13. Persons who have been involved in a high-energy event that results in a high index of suspicion for major or severe injury shall be evaluated expeditiously upon arrival by the emergency physician to determine if a surgical consult is necessary. Surgical consultations shall occur at the time of injury identification.
14. Disposition decisions shall be made expeditiously by a physician at the hospital and preparations for transfer or admission begun as soon as possible after arrival at the facility.
15. Major or severe trauma patients who are intentionally retained longer than 2 hours, except where medically appropriate, shall receive the same level of care as the highest available within its TSA or within the TSA to which the patient's condition warrants transfer-out.
16. The trauma medical director (TMD) shall formally review trauma panel members on an annual basis, to include at minimum the review of number of admissions, deaths, complications, audit filter fallouts, and timeliness of response to trauma activations and consults.
17. All healthcare professionals participating in the care of major or severe trauma patients shall participate in the PI program, and each discipline shall have representation at PI meetings.
18. All major or severe trauma patients' charts, including autopsy results when available, shall be reviewed concurrently and retrospectively by the trauma program's PI process for appropriateness and quality of care provided by the hospital. Deviations from standards shall be addressed through a documented trauma PI process.
19. Standards and time frames for trauma registry data entry shall be developed, and shall be no longer than 45 days after the patient's hospital discharge date.
20. The Texas Hospital Data Set essential items shall be electronically submitted to the State EMS/Trauma Registry on at least a quarterly basis, either directly or through a regional registry. Final autopsy results shall be included in the hospital trauma registry.
21. A Level III trauma facility shall participate in the PI program of the RAC in the TSA where it is located, and shall also participate as requested by executive boards, in the PI program of RACs into which the facility has transferred a patient.

Figure: 25 TAC §157.125(x)(2)

Advanced (Level III) Trauma Facility
Audit Filters

1. Absence of an EMS patient care report on the medical record for a patient transported by pre-hospital EMS personnel.
2. EMS scene time of greater than 20 minutes.
3. Absence of pre-hospital essential data items on EMS patient care report.
4. No, or absence of documentation of, trauma team activation for a potential major or severe trauma patient per protocol.
5. Trauma team member response times of greater than 10 minutes for those in-house or greater than 30 minutes for those off-site.
6. Absence of a trauma flow sheet.
7. Absence of documentation of trauma team response times, mechanism of injury, assessments, interventions, and response to interventions.
8. Absence of at least hourly documentation of blood pressure, pulse, respirations, Glasgow coma scale (GCS), and fluid intake and output for a major or severe trauma patient, beginning with arrival in the emergency department (ED), including time spent in radiology, up to admission, death, or transfer.
9. Absence of documented temperature on arrival, discharge, intra-operatively and when indicated.
10. Resuscitation protocol, treatment protocols, and/or standards of care not followed.
11. A patient with a GCS of less than 14 did not receive a CT of the head.
12. A comatose patient (GCS of 8 or less) leaving the ED before a definitive airway is established.
13. Required equipment, which is shared with other departments (i.e. fluid warmer), is not immediately available when requested.
14. Absence of physician notes, including daily physician notes on admitted trauma patients.
15. Major or severe trauma patients transferred to another health-care facility or admitted to surgery or ICU after spending greater than 2 hours in the ED.
16. A major or severe trauma patient admitted to the hospital under the care of a physician who is not a surgeon.
17. Patient sustaining a gunshot wound to the abdomen who is managed non-operatively.
18. Patient with abdominal injuries and hypotension (systolic BP less than 90 or age-appropriate hypotension) who does not undergo laparotomy within 1 hour of arrival in the ED.

Advanced (Level III) Trauma Facility
Audit Filters (cont.)

19. Patient undergoing laparotomy performed greater than 4 hours after arrival in the ED.
20. Patient with epidural or subdural brain hematoma receiving craniotomy greater than 4 hours after arrival at the ED, excluding those performed for ICP monitoring.
21. Interval of greater than 8 hours between arrival and the initiation of debridement of an open fracture.
22. Abdominal, thoracic, vascular, or cranial surgery performed greater than 24 hours after arrival.
23. Non-fixation of femoral diaphyseal fracture in an adult trauma patient.
24. Patient requiring re-intubation of the airway within 48 hours of extubation.
25. Selected in-patient complications monitored as trends or sentinel events.
26. All delays in identification of injuries.
27. Major or severe trauma patient admitted to OR, ICU, or inpatient and then transferred to a higher level of care.
28. Denials of acceptance by a higher level of care facility.
29. Major or severe trauma patient transferred to a non-designated or lower level designated facility.
30. Diversion of major or severe trauma patients and/or denial of transfers-in from other facilities.
31. All trauma deaths.

BASIC (LEVEL IV) TRAUMA FACILITY CRITERIA

Basic Trauma Facility (Level IV) - provides resuscitation, stabilization, and arranges for appropriate transfer of major and severe trauma patients to a higher level trauma facility when medically necessary; provides ongoing educational opportunities in trauma related topics for health care professionals and the public, and implements targeted injury prevention programs (see attached standards). The administrative commitment of a Level IV trauma facility includes developing processes that define the trauma patient population evaluated by the facility and track them throughout the course of their stay in order to maximize funding opportunities.

A. TRAUMA PROGRAM	
<p>1. An identified Trauma Medical Director (TMD) who:</p> <ul style="list-style-type: none"> ▪ is currently credentialed in Advanced Trauma Life Support (ATLS) or an equivalent course approved by the Department of State Health Services (DSHS). ▪ is charged with overall management of trauma services provided by the hospital. ▪ shall have the authority and responsibility for the clinical oversight of the trauma program. This is accomplished through mechanisms that may include: credentialing of medical staff who provide trauma care; providing trauma care; developing treatment protocols; cooperating with the nursing administration to support the nursing needs of the trauma patients; coordinating the performance improvement (PI) peer review; and correcting deficiencies in trauma care. <p>a. There shall be a defined job description and organizational chart delineating the TMD's role and responsibilities.</p> <p>b. The TMD shall be credentialed by the hospital to participate in the resuscitation and treatment of trauma patients using criteria to include such things as board-certification/board-eligibility, trauma continuing medical education, compliance with trauma protocols, and participation in the trauma PI program.</p> <p>c. The TMD shall participate in a leadership role in the hospital, community, and emergency management (disaster) response committee.</p> <p>d. The TMD should participate in the development of the regional trauma system plan.</p>	E
<p>2. An identified Trauma Nurse Coordinator/Trauma Program Manager (TNC/TPM) who:</p> <ul style="list-style-type: none"> ▪ is a registered nurse. ▪ has successfully completed and is current in the Trauma Nurse Core Course (TNCC) or Advanced Trauma Course for Nurses (ATCN) or a DSHS-approved equivalent. ▪ has successfully completed and is current in a nationally recognized pediatric advanced life support course ((e.g. Pediatric Advanced Life Support (PALS) or the Emergency Nurse Pediatric Course (ENPC)). ▪ has the authority and responsibility to monitor trauma patient care from emergency department (ED) admission through operative intervention(s), ICU care, stabilization, rehabilitation care, and discharge, including the trauma PI program. <p>a. There shall be a defined job description and organizational chart delineating the TNC/TPM's role and responsibilities.</p>	E

<ul style="list-style-type: none"> b. The TNC/TPM shall participate in a leadership role in the hospital, community, and regional emergency management (disaster) response committee. c. Trauma programs should have a minimum of .8 FTE dedicated to the TNC/TPM position. d. The TNC/TPM should complete a course designed for his/her role which provides essential information on the structure, process, organization and administrative responsibilities of a PI program to include a trauma outcomes and performance improvement course ((e.g. Trauma Outcomes Performance Improvement Course (TOPIC) or Trauma Coordinators Core Course (TCCC)). 	
3. An identified Trauma Registrar who has appropriate training ((e.g. the Association for the Advancement of Automotive Medicine (AAAM) course, American Trauma Society (ATS) Trauma Registrar Course)) in injury severity scaling. Typically, one full-time equivalent (FTE) employee dedicated to the registry shall be required to process approximately 500 patients annually.	D
4. Written protocols, developed with approval by the hospital's medical staff, for: <ul style="list-style-type: none"> a. Trauma team activation b. Identification of trauma team responsibilities during a resuscitation c. Resuscitation and Treatment of trauma patients d. Triage, admission and transfer of trauma patients 	E

B. PHYSICIAN SERVICES

1. Emergency Medicine - this requirement may be fulfilled by a physician credentialed by the hospital to provide emergency medical services. Any emergency physician who is providing trauma coverage shall be credentialed by the TMD to participate in the resuscitation and treatment of trauma patients of all ages to include requirements such as current board certification/eligibility, an average of 9 hours of trauma-related continuing medical education per year, compliance with trauma protocols, and participation in the trauma PI program. An Emergency Medicine board-certified physician who is providing trauma coverage shall have successfully completed an ATLS Student Course or a DSHS-approved ATLS equivalent course. Current ATLS verification is required for all physicians who work in the ED and are not board certified in Emergency Medicine. The emergency physician representative to the multidisciplinary committee that provides trauma coverage to the facility shall attend 50% or greater of multidisciplinary and peer review trauma committee meetings.	E
2. Radiology	D
3. Anesthesiology - requirements may be fulfilled by a member of the anesthesia care team credentialed in assessing emergent situations in trauma patients and providing any indicated treatment.	D

4. Primary Care Physician - The patient's primary care physician should be notified at an appropriate time.	D
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C. NURSING SERVICES (for all Critical Care and Patient Care Areas)

1. All nurses caring for trauma patients throughout the continuum of care have ongoing documented knowledge and skill in trauma nursing for patients of all ages to include trauma specific orientation, annual clinical competencies, and continuing education.	E
2. Written standards on nursing care for trauma patients for all units (i.e. ED, ICU, OR, PACU, general wards) in the trauma facility shall be implemented.	E
3. A written plan, developed by the hospital, for acquisition of additional staff on a 24 hour basis to support units with increased patient acuity, multiple emergency procedures and admissions (i.e. written disaster plan.)	E
4. 50% of nurses caring for trauma patients should be certified in their area of specialty (e.g. CEN, CCRN, CNRN, etc.)	D

D. EMERGENCY DEPARTMENT

1. Physician on-call schedule must be published.	E
2. Physician with special competence in the care of critically injured patients, who is designated member of the trauma team and who is on-call (if not in-house 24/7) and promptly available within 30 minutes of request from inside or outside the hospital.* *Neither a hospital's telemedical capabilities nor the physical presence of physician assistants (PAs) or clinical nurse specialists/nurse practitioners (CNSs/NPs) shall satisfy this requirement. Additionally, PAs/NPs and telemedicine-support physicians who participate in the care of major/severe trauma patients shall be credentialed by the hospital to participate in the resuscitation and treatment of said trauma patients, to include requirements such as board certification/eligibility, an average of 9 hours of trauma-related continuing medical education per year, compliance with trauma protocols, and participation in the trauma PI program.	E
3. The physician on duty or on-call to the emergency department (ED) shall be activated on EMS communication with the ED or after a primary assessment of patients who arrive to the ED by private vehicle for the major or severe trauma patient. Response time shall not exceed thirty minutes from notification (this criterion shall be monitored in the trauma PI program.)	E
4. A minimum of one and preferably two registered nurses who have trauma nursing training shall participate in initial major trauma resuscitations.	E
5. Nurse staffing in initial resuscitation area is based on patient acuity and trauma team composition based on historical census and acuity data.	E
6. At least one member of the registered nursing staff responding to the trauma team activation for a major or severe trauma resuscitation has successfully completed and holds current credentials in an advanced cardiac life support course (e.g. ACLS or hospital equivalent), a nationally recognized pediatric advanced life support course (e.g. PALS or ENPC) and TNCC or ATCN or a DSHS-approved equivalent.	E

7.	100% of nursing staff have successfully completed and hold current credentials in an advanced cardiac life support course (e.g. ACLS or hospital equivalent), a nationally recognized pediatric advanced life support course (e.g. PALS or ENPC) and TNCC or ATCN or a DSHS-approved equivalent, within 18 months of date of employment in the ED or date of designation.	E
8.	Nursing documentation for trauma patients is systematic and meets the trauma registry guidelines.	E
9.	Two-way communication with all pre-hospital emergency medical services vehicles.	E
10.	Equipment and services for the evaluation and resuscitation of, and to provide life support for, critically or seriously injured patients of all ages shall include but not be limited to:	E
a.	Airway control and ventilation equipment including laryngoscope and endotracheal tubes of all sizes, bag-valve-mask devices (BVMs), pocket masks, and oxygen	E
b.	Mechanical ventilator	E
c.	Pulse oximetry	E
d.	Suction devices	E
e.	Electrocardiograph - oscilloscope - defibrillator	E
f.	Supraglottic airway management device (e.g. LMA)	D
g.	Apparatus to establish central venous pressure monitoring equipment	D
h.	All standard intravenous fluids and administration devices, including large-bore intravenous catheters and a rapid infuser system	E
i.	Sterile surgical sets for procedures standard for the emergency room such as thoracostomy, venous cutdown, central line insertion, thoracotomy, airway control/cricothyrotomy, etc.	E
j.	Drugs and supplies necessary for emergency care	E
k.	Cervical spine stabilization device	E
l.	Length-based body weight & tracheal tube size evaluation system (such as Broselow tape) and resuscitation medications and equipment that are dose-appropriate for all ages	E
m.	Long bone stabilization device	E
n.	Pelvic stabilization device	E
o.	Thermal control equipment for patients and a rapid warming device for blood and fluids	E
p.	Non-invasive continuous blood pressure monitoring devices	E
q.	Qualitative end tidal CO ₂ monitor	
11.	X-ray capability.	E

E. CLINICAL LABORATORY SERVICE (available 24 hours per day)		
1.	Call-back process for trauma activations available within 30 minutes. This system shall be continuously monitored in the trauma PI program.	E
2.	Standard analyses of blood, urine, and other body fluids, including microsampling.	E
3.	Blood typing and cross-matching.	D
4.	Capability for immediate release of blood for a transfusion and a protocol to obtain additional blood supply.	E

5.	Coagulation studies.	E
6.	Blood gases and pH determinations.	E
7.	Drug and alcohol screening - toxicology screens need not be immediately available but are desirable (if available, results should be included in all trauma PI reviews.)	D

F. RADIOLOGICAL CAPABILITIES (available 24 hours per day)		
1.	Call-back process for trauma activations available within 30 minutes. This system shall be continuously monitored in the trauma PI program.	E
2.	24-hour coverage by in-house technician.	D
3.	Computerized tomography.	D

G. PERFORMANCE IMPROVEMENT		
1.	Track record: On Initial Designation: a facility must have completed at least six months of audits on all qualifying trauma records with evidence of "loop closure" on identified issues. Compliance with internal trauma policies must be evident. On Re-designation: a facility must show continuous PI activities throughout its designation and a rolling current three year period must be available for review at all times.	E
2.	Minimum inclusion criteria: All trauma team activations (including those discharged from the ED), all trauma deaths or dead on arrivals (DOAs), all major and severe trauma admissions; transfers-in and transfers-out; and readmissions within 48 hours after discharge.	E
3.	An organized trauma PI program established by the hospital, to include a pediatric-specific component and trauma audit filters (see "Basic Trauma Facility Audit Filters" list.)	E
	a. Audit of trauma charts for appropriateness and quality of care.	E
	b. Documented evidence of identification of all deviations from trauma standards of care, with in-depth critical review.	E
	c. Documentation of actions taken to address all identified issues.	E
	d. Documented evidence of participation by the TMD.	E
	e. Morbidity and mortality review including decisions by the TMD as to whether or not standard of care was met.	E
	f. Documented resolutions "loop closure" of all identified issues to prevent future recurrences.	E
	g. Special audit for all trauma deaths and other specified cases, including complications, utilizing age-specific criteria.	E
	h. Multidisciplinary hospital trauma PI committee structure in place.	E
4.	Multidisciplinary trauma conferences, continuing education and problem solving to include documented nursing and pre-hospital participation	D

5.	Feedback regarding major/severe trauma patient transfers-out from the ED and in-patient units shall be obtained from receiving facilities.	E
6.	Trauma registry - data shall be forwarded to the state trauma registry on at least a quarterly basis.	E
7.	Documentation of severity of injury (by Glasgow Comma Scale, revised trauma score, age, injury severity score) and outcome (survival, length of stay, ICU length of stay) with monthly review of statistics.	E
8.	Participation with the regional advisory council's (RAC) PI program, including adherence to regional protocols, review of pre-hospital trauma care, submitting data to the RAC as requested including such things as summaries of transfer denials and transfers to hospitals outside of the RAC.	E
9.	Times of and reasons for diversion must be documented and reviewed by the trauma PI program.	E

H. REGIONAL TRAUMA SYSTEM

1.	Must participate in the regional trauma system per RAC requirements.	E
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I. TRANSFERS

1.	A process to expedite the transfer of major and severe trauma patients to include such things as written protocols, written transfer agreements, and a regional trauma system transfer plan for patients needing higher level of care or specialty services (i.e. surgery, burns, etc.)	E
2.	A system for establishing an appropriate landing zone in close proximity to the hospital (if rotor wing services are available.)	E

J. PUBLIC EDUCATION/INJURY PREVENTION

1.	A public education program to address the major injury problems within the hospital's service area. Documented participation in a RAC injury prevention program is acceptable.	E
2.	Coordination and/or participation in community/RAC injury prevention activities.	E

K. TRAINING PROGRAMS

1.	Formal programs in trauma continuing education provided by hospital for staff based on needs identified from the trauma PI program for:	E
a.	Staff physicians	E
b.	Nurses	E
c.	Allied health personnel, including mid-level providers such as physician assistants and nurse practitioners	E

Basic (Level IV) Trauma Facility Standards

1. A Level IV Trauma Facility shall be an active participant on the regional advisory council (RAC) of its trauma service area (TSA).
2. A Level IV Trauma Facility is available to stabilize all major and severe trauma patients 24 hours per day/7 days per week. Diversion of such patients to other facilities should be made rarely and only when resources are not available in the emergency department (ED) to stabilize and transfer these patients.
3. A Level IV Trauma Facility shall have an established relationship with the tertiary trauma facility(ies) to which it routinely transfers, to include such things as:
 - written transfer agreements
 - prospective dialogue regarding appropriate pre-transfer diagnostic laboratory and radiological studies so that each is cognizant of the other's performance expectations
 - consideration of a single phone call transfer-request process
 - provision of feedback regarding transfers as part of the performance improvement (PI) program.
4. A Level IV trauma facility shall have age-specific policies/processes that demonstrate knowledge of the special resources potentially needed by injured patients of all ages, and is cognizant of the pediatric capabilities of the hospitals to which it customarily effectuates transfers so that it can determine the most appropriate facility.
5. A Level IV Trauma Facility shall have an established relationship with the EMS providers who transport to the facility to facilitate adequate pre-arrival notification, appropriate documentation, and appropriate pre-hospital care.
6. The patient shall be treated according to current practice per standards and protocols within the capability of the facility. A Level IV trauma facility shall notify the regional emergency healthcare community when a usually-provided service, either "essential" or "desired", is not available.
7. A Level IV trauma facility with on-call general surgeon(s) shall, in close collaboration with the appropriate RAC members, have guidelines that balance its capability to take critical trauma patients to the operating room for life/limb saving procedures with the customary "stabilize and transfer" standard for a Level IV trauma facility without surgical capabilities.
8. The major or severe trauma patient shall be met on arrival in the ED by a team of healthcare professionals as defined in the trauma activation protocols and credentialed by the hospital. When a physician other than the on-call emergency physician participates in the management of care, that physician shall also be credentialed by the hospital and must meet the trauma education requirements of the emergency physician.
9. Throughout their hospital stay, trauma patients shall be cared for by healthcare professionals with documented education and skill in the assessment and care of injuries.
10. The major or severe trauma patient shall be rapidly assessed, resuscitated, and stabilized according to established trauma management guidelines including ATLS, TNCC, ATCN, and ENPC.

Basic (Level IV) Trauma Facility Standards (cont.)

11. Disposition decisions shall be made expeditiously by a physician at the hospital and preparations for transfer begun as soon as possible after arrival at the facility.
12. Major or severe trauma patients who are intentionally retained longer than 2 hours, except where medically appropriate, shall receive the same level of care as the highest available within its TSA or within the TSA to which the patient's condition warrants transfer-out.
13. All healthcare professionals participating in the care of major or severe trauma patients must participate in the PI program, and each discipline shall have representation at PI meetings.
14. The medical records of all major and severe trauma patients, including autopsy results when available, shall be reviewed concurrently and retrospectively by the trauma program's PI process for appropriateness and quality of care. Deviations from standards of care shall be addressed through a documented trauma PI process.
15. Standards and time frames for trauma registry data entry and abstraction of PI issues shall be developed, and shall be no longer than 45 days after the patient's hospital discharge date.
16. The Texas Hospital Standard Data Set essential items shall be uploaded to the State EMS/Trauma Registry on at least a quarterly basis.
17. A Level IV trauma facility shall participate in the PI program of the RAC in the TSA where it is located, and shall also participate as requested by executive boards in the PI program of RACs into which the facility has transferred a patient.
18. The appropriateness of transferring-out major or severe trauma patients presenting to the ED of a Level IV trauma facility with on-call surgeon(s) shall be subject to 100% review in the hospital's PI program.

Figure: 25 TAC §157.125(y)(2)

**Basic (Level IV) Trauma Facility
Audit Filters**

1. Absence of an EMS report on the medical record for a patient transported by pre-hospital EMS personnel.
2. EMS scene time of greater than 20 minutes.
3. Absence of pre-hospital essential data items on EMS patient care report.
4. No, or absence of documentation of, trauma team activation for a potential major or severe trauma patient per protocol.
5. Trauma team member response times of greater than 10 minutes for those in-house or greater than 30 minutes for those off-site.
6. Absence of a trauma flow sheet.
7. Absence of documentation of trauma team response times, mechanism of injury, assessments, interventions, and response to interventions.
8. Absence of at least hourly documentation of blood pressure, pulse, respirations, Glasgow coma scale (GCS), and fluid intake and output for a major or severe trauma patient, beginning with arrival in the emergency department (ED), including time spent in radiology, up to admission, death, or transfer.
9. Absence of documented temperature on arrival, discharge and when indicated.
10. Resuscitation protocol, treatment protocols, and/or standards of care not followed.
11. A comatose patient (GCS of 8 or less) leaving the ED before a definitive airway is established.
12. Required equipment, which is shared with in-house departments (e.g. fluid warmer), not readily available when requested.
13. Absence of physician notes.
14. Patient admitted to surgery or ICU.
15. All delays in identification of injuries.
16. Patient transferred to another health-care facility after spending greater than 2 hours in the ED.
17. Patient admitted to the hospital then transferred to a higher level of care.
18. Major or severe (hemodynamically unstable) trauma patient transferred-out when a general surgeon was on-call to the ED.

**Basic (Level IV) Trauma Facility
Audit Filters (cont.)**

- 19. Denial of acceptance by a higher level of care facility.
- 20. Major or severe trauma patient transferred to a non-designated facility.
- 21. Diversion of major or severe trauma patients.
- 22. All trauma deaths.
- 23. Patient admitted without being examined by a physician.

Figure: 31 TAC §57.157(b)

Species	Ring ID in inches
Washboard, <i>Megaloniaias nervosa</i>	4.00
Threeridges and roundlakes, <i>Amblema</i> spp.	2.75
Mapleleafs and pimplebacks, <i>Quadrula</i> spp.	2.75
Tampico pearlymussel, <i>Cyrtonaias tampicoensis</i>	2.75
Bleufer, <i>Potamilus purpuratus</i>	2.75
All Other Species of Freshwater Mussels	2.50

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Open Solicitation #2 for Real County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 Texas Administrative Code (TAC) §19.2324(c), secondary selection process, the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Real County, County #193**. Medicaid nursing facility occupancy rates in **Real County** exceeded the 90% occupancy threshold for six consecutive months during the period of **September 2005 through February 2006**. The county occupancy rates for each month of that period were: **90.5%, 98.2%, 99.2%, 95.1%, 95.0%, 96.9%**. In accordance with the requirements contained in 40 TAC §19.2324(c), DADS will allocate up to **90** Medicaid beds to an eligible applicant that desires to construct a new nursing facility or to construct an addition to an existing nursing facility. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(c)(4) to Joe D. Armstrong, Department of Aging and Disability Services, Licensing and Credentialing Section, Regulatory Services, Mail Code E-342, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DADS before the close of business July 10, 2006, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DADS will allocate Medicaid beds in accordance with 40 TAC §19.2324(c)(5). If no application for the secondary selection process is received or if no applicant meets the requirements in §19.2324(c), no further solicitation will occur.

TRD-200602942

Marianne Reat

General Counsel

Department of Aging and Disability Services

Filed: May 30, 2006



Ark-Tex Council of Governments

Request for Qualifications

Ark-Tex Council of Governments (ATCOG) is seeking qualified persons for Environmental Enforcement training. Please contact Elizabeth Layman, Environmental Resource Planner, at ATCOG, 122 Plaza West or by calling (903) 832-8636.

TRD-200602943

L. D. Williamson

Executive Director

Ark-Tex Council of Governments

Filed: May 30, 2006



Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-6-11386. TBPC seeks a 5 year lease of approximately 4,952 square feet of office space in the McAllen or Edinburg area, Hidalgo County, Texas.

The deadline for questions is June 13, 2006 and the deadline for proposals is June 22, 2006 at 3:00 P.M. The award date is July 24, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the revised RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=64674.

TRD-200602935

Ingrid Hansen

General Counsel

Texas Building and Procurement Commission

Filed: May 26, 2006



Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Comptroller of Public Accounts (CPA), announces the issuance of Request for Proposals (RFP) #303-6-11581. TBPC seeks a five year lease of approximately 2,390 square feet of office space in Houston, Texas.

The deadline for questions is June 20, 2006 and the deadline for proposals is June 29, 2006 at 3:00 p.m. The award date is August 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=65104.

TRD-200602955

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: May 31, 2006



Comptroller of Public Accounts

RFQ 175q - Independent Examining Services

Request for Qualifications: Pursuant to Senate Bill 1458, 77th Texas Legislature, codified in Subchapter A, Chapter 111, §111.0045, Texas Tax Code, the Comptroller of Public Accounts (the Comptroller) issues this Request for Qualifications (RFQ #175q) from qualified independent persons or firms to perform certain services. As a clarification, as used in this RFQ #175q and the Comptroller's rules codified at 34 TAC §3.3, the services under any contracts resulting from this RFQ mean tax compliance examination services; such services do not include any attestation services or rendition of an opinion of any nature by any such contractors.

The Comptroller issued this RFQ #175q by posting it on the *Electronic State Business Daily* on June 9, 2006, and, by publishing this RFQ #175q in the June 9, 2006 issue of the *Texas Register*. The Comptroller solicits a Statement of Qualifications pursuant to Chapter 2254, Subchapter A, of the Texas Government Code from persons or firms that are interested in contracting with the Comptroller to perform examinations that meet the requirements of §111.0045, Texas Tax Code; administrative rules adopted and procedures established by the Comptroller under that statute; and other applicable law. The Comptroller has adopted a rule governing contract examiners as codified at 34 TAC §3.3. Under this RFQ, the Comptroller reserves the right to select and contract with one or more persons or firms to conduct these examinations on an as-needed basis. No minimum amount of examinations or compensation is guaranteed to any selected contractor.

The Comptroller solicits Statements of Qualifications in response to this RFQ from existing contract examiners as well as qualified persons or firms not currently or previously under contract with the Comptroller. All respondents, including contract examiners selected under previous RFQs must attend Mandatory Orientation conducted by the Comptroller prior to receipt of any examination packages under any contract awarded under this RFQ. However, respondents that are existing contractors and have received an official notice of intent to renew contract through August 31, 2007 do not need to submit a response to this RFQ. The contract term shall be for one year ending August 31, 2007 with no renewal options.

By this contract examination program, the Comptroller intends to increase the number of examinations of taxpayers. The Comptroller has implemented a program to contract with interested persons and firms that meet the following minimum qualifications and other reasonable qualifications established by the Comptroller consistent with §111.0045, Texas Tax Code; the Comptroller's administrative rules and procedures; and other applicable law.

The Comptroller will accept Statements of Qualifications in response to this RFQ from firms and individuals that have the following minimum qualifications:

- (i) a bachelor's degree from an accredited senior college or university with a minimum of twenty-four (24) hours of accounting, including six (6) hours of intermediate accounting and three hours of auditing; and
- (ii) one (1) year of experience in Texas tax auditing, accounting, or other Texas tax services.

For state fiscal year 2007, the Comptroller will select, in its sole discretion, those qualified contract examiners to perform examinations on an as-needed and as-assigned basis that the Comptroller identifies as appropriate for inclusion in such contracts. At the time of assignment, the Comptroller will provide selected contract examiners with a preliminary examination package containing the identity and requisite information for each taxpayer that will be examined under the contract. The contracts will provide for one or more awards of not to exceed \$150,000 firm fixed price payment to the examiner upon successful completion of the assigned examinations (final examination package) and the Comptroller's written acceptance of the examination report and

other contract deliverables, including workpapers. Awards shall be based on the qualifications of the examiners proposed in the Statement of Qualifications submitted. Individual examiners submitting Statements of Qualification who have no other examiner employees shall be considered, in the Comptroller's sole discretion, for one (1) \$60,000, \$75,000, or \$90,000 award; and individual examiners with at least one (1) employee examiner and firms in the form of any business entity that may lawfully perform examinations and which have two (2) or more examiners may be considered, in the Comptroller's sole discretion, for multiple awards of \$60,000 or \$75,000. Barring unforeseen circumstances, only one (1) round of awards will be made at the beginning of the one (1) year contract term; however, the Comptroller reserves the right, in its sole discretion, to make additional awards during the one (1) year contract term. Payment will be made in accordance with the terms of the contract. Each contract will require the examiner to perform and complete the examinations, including the examination reports, for a group of taxpayers that, based on historical examination completion data, should require about 1,280 person hours of work for each \$60,000 amount to complete at the rate of \$46.88 per hour. Examiners will be paid for assigned work completed to date in \$10,000 increments (except the last payment, if applicable) upon completion of a set number of the examinations assigned as determined by the Comptroller and, upon submission to and acceptance by the Comptroller as provided in the contract.

In performing assigned examinations and for the contracted lump sum payments, selected contract examiners will complete all work necessary to identify the correct amount of tax that should have been reported by each taxpayer and provide the Comptroller with the data and other information necessary to support any assessment of tax or refund of tax that results from the examination report. Selected contract examiners will also provide any time reports and other written documentation required by the Comptroller. The Comptroller will not make any payments in advance.

Under this RFQ, the maximum contract amount paid to any individual examiner without additional examiner employees, an individual examiner with additional examiner employees, or a firm with multiple examiners will not exceed \$150,000.00 for the FY 2007.

Selected contract examiners must complete all work and submit all examination reports, workpapers, and other deliverables no later than required under the terms of the proposed contract.

Selected contract examiners must meet professional conflict of interest standards and other standards established by the Comptroller to ensure the independence of each assigned examination.

Regarding prior employment with the Comptroller, the following provisions shall apply in determining eligibility for contract awards, if any, resulting from this RFQ.

Section 2252.901, Texas Government Code, reads as follows: "(a) A state agency may not enter into an employment contract, a professional services contract under Chapter 2254, or a consulting services contract under Chapter 2254 with a former or retired employee of the agency before the first anniversary of the last date on which the individual was employed by the agency, if appropriated money will be used to make payments under the contract. This section does not prohibit an agency from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee leaving the agency, provided that the former or retired employee does not perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency."

Pursuant to the above statute, an individual employed by the Comptroller during the last twelve (12) months may be employed by another

Contractor but shall not work on projects or perform examinations on taxpayers he or she examined while employed by the Comptroller. That is, the Comptroller interprets "projects" within §2252.901 to include specific examinations performed or worked on by the former employee. Additionally, it is the Comptroller's policy that, if a former employee of the Comptroller of the type described above is employed by or associated with a business entity in which such employee holds any equity interest, then the firm may not contract with the Comptroller within the twelve (12) month period. The twelve (12) month period is determined by working back from the effective date of the proposed contract.

Section 572.054, Texas Govt. Code, reads in pertinent part as follows:

"(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(c) Subsection (b) applies only to:

(1) a state officer of a regulatory agency; or

(2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan."

This §572.054 (b) prohibition against working on matters that the former employee participated in while employed by the Comptroller applies without limitation to any such past actions by the employee even if longer than twelve (12) months, if the employee's compensation exceeded \$33,000 annually while employed by the Comptroller at any time during that employee's employment with the Comptroller. Again, it is the Comptroller's policy interpretation that "matter" includes specific examinations of taxpayers.

Time is of the essence in implementation of this program. Respondents to this RFQ must be available to begin accepting assignments no later than September 2006 upon completion of orientation or other timelines established by the Comptroller for such implementation. The Comptroller anticipates awarding multiple master contracts as a result of this RFQ and will not entertain negotiation of the basic terms and conditions. All respondents will be offered the same master contract terms and conditions. Respondents should not respond to this RFQ if they cannot agree to the terms and conditions of the sample contract. Any resulting contracts are non-exclusive, and the Comptroller may issue additional solicitations for the contracted services at any time. The Comptroller is not obligated to assign any examinations to recipients of master contract awards.

Questions; Proposed Contract: Questions concerning this RFQ must be in writing and submitted via hand delivery, facsimile, or E-mail no later than June 23, 2006, 2:00 p.m., Central Zone Time (CZT) to Thomas H. Hill, Assistant General Counsel, Contracts, General Counsel Division, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas 78774, telephone number: (512) 305-8673, facsimile (512) 475-0973 or E-mail at contracts@cpa.state.tx.us. The Comptroller's official response to questions received by this deadline will be posted as an addendum to the *Electronic State Business Daily* notice as soon as possible after receipt; the Comptroller expects to post these official responses no later than June 30, 2006 or as soon thereafter as practicable. Respondents should note that the Official Response to Questions may contain information modifying the terms and conditions

of the RFQ, revising or amending the RFQ and/or other documents attached to the RFQ. For these reasons, respondents should carefully review and consider the Official Response to Questions, amendments or modifications before submitting their Statements of Qualification. A copy of the sample master contract, the standard form vita described below, mandatory Execution of Statement of Qualifications Form, and Required Checklist for Statements of Qualification are all attached to this RFQ for reference and use by respondents.

Closing Date: An original with original ink signatures on each document within the Statement of Qualifications requiring signatures and ten (10) hard copies of each Statement of Qualifications clearly marked as copies must be overnighted or hand delivered to and received in the Office of the Assistant General Counsel, Contracts, at the address specified above no later than 2:00 p.m. (CZT), on July 14, 2006. Statements of Qualifications received after this time and date will not be considered. No Statements of Qualification will be accepted in any other format or media other than hard copy. Respondents shall be solely responsible for confirming the timely receipt of Statements of Qualifications.

Content: Statements of Qualifications must include all of the following information in order to be considered:

1. Checklist in format of Exhibit G to this RFQ as posted on the addenda to the *Electronic State Business Daily* notice of issuance of this RFQ;

2. Transmittal letter that: (a) describes specific experience and qualifications of both the firm and each individual in the conduct of state tax examinations and (b) outlines the respondent's understanding of §111.0045, Texas Tax Code, and other relevant provisions of the Texas Tax Code and other related enabling legislation related to conduct of these examinations on an as-needed basis;

3. Physical address of firm's or individual's business offices and each local examination facility and primary contact person;

4. Vita and Addendum A for each individual who will be involved in the project. The Vita and Addendum A must be on the form contained on the addenda to the *Electronic State Business Daily* notice of issuance of this RFQ. This response to the RFQ must disclose all personnel who will perform professional services under the terms of the Master Agreement. Respondent understands only those persons disclosed by the Vita and Addendum A will be admitted to the required orientation classes. This provision will be strictly enforced. All information on the vita form must be fully filled out and complete in all respects. Evaluation of respondents will be based in part on the information on this form, and it is vitally important that the information be fully complete and accurate. Failure to submit a complete, separate, and signed Vita and Addendum A detailing all courses, dates, and subject of courses by each person who applies to perform examination services shall result in disqualification of the Statement of Qualifications;

5. A sample Examination Plan providing a list of the examination procedures and resources that will be utilized to conduct these examinations on an as-needed basis if selected by the Comptroller. The Examination plan should list or describe the actual procedures to be used in sufficient detail so as to demonstrate an understanding of internal control, record keeping, and taxpayer reporting responsibilities for sales tax and the appropriate examination procedures necessary for verification of correct amounts of tax. The sample Examination Plan must include all items contained in the General Audit Checklist section of the Comptroller's Auditing Fundamentals Manual, Chapter 3, and all items contained in the Audit Plan published in Chapter 4 of the Comptroller's Sales Tax Audit Policy/Procedures Manual. The sample examination plan should include all necessary procedures and instructions for completing those procedures in sufficient detail to allow any person who meets the one-year experience requirement in 34 TAC §3.3 to properly

perform a sales and use tax examination with minimal supervision. If portions of any Comptroller publication, manual or other document are used to prepare the examination plan or incorporated into the plan, the most current version must be used. The Comptroller's audit manuals may be found at the following internet location:

<http://www.window.state.tx.us/taxinfo/audit/auditman.htm>. Also see the Comptroller's Auditing Fundamentals Manual, Chapter 3 and 4 at <http://www.window.state.tx.us/taxinfo/audit/auditfun/3aplan.htm> and <http://www.window.state.tx.us/taxinfo/audit/auditfun/4entranc.htm>, respectively. Chapter 3 and 4 of the Sales Tax Policy/Procedure Manual are at <http://www.window.state.tx.us/taxinfo/audit/salestax/3a.htm> and <http://www.window.state.tx.us/taxinfo/audit/salestax/4a.htm>, respectively;

6. Proposed sample Workplan (including Timeline, Tasks and Deliverables) to implement each of the examinations after assignment, including: (a) methods for deploying personnel and equipment to perform the examinations timely and otherwise in accordance with each contractual requirement; (b) methods for making personnel available for orientation and examination; and (c) date availability for each of the personnel to perform assigned examinations; (d) methods for conducting preliminary (prior to receipt of taxpayer questionnaire) and final (after receipt of taxpayer questionnaire) conflicts checks regarding actual or potential conflicts of interest and notifying the Comptroller prior to accepting or beginning an assignment, and (e) an understanding of the Audit Flowchart Timelines contained in the appendix of the Comptroller's Audit Fundamentals Manual;

7. Statement of whether the respondent is a Historically Underutilized Business (HUB) and its efforts and willingness of the respondent to comply with the HUB requirements of Texas law and administrative rules and regulations. In order to be a Historically Underutilized Business, a respondent must be registered as such with the Texas Building and Procurement Commission according to its rules and regulations concerning the same. You may check their website at www.tbpc.state.tx.us and choose Historically Underutilized Businesses or call the Comptroller's HUB Coordinator, Hilda Galaviz at 512-463-3911;

8. Confirmation of understanding of and willingness to comply with the policies, directives, rules, procedures and guidelines of the Comptroller and other Standards of Performance established by the Comptroller for the conduct of the assigned examinations;

9. Confirmation of understanding of and willingness to adhere to all provisions of the sample contract, including, without limitation, the proposed fee arrangements, as posted on the addenda to the Electronic State Business Daily notice of issuance of this RFQ;

10. Completed, initialed where applicable, and signed Execution of Statement of Qualifications Form on Exhibit A as posted on the addenda to the *Electronic State Business Daily* notice of issuance of this RFQ;

11. Completed and signed Nondisclosure Agreement on the form set out on Exhibit D to this RFQ as posted on the addenda to the *Electronic State Business Daily* notice of issuance of this RFQ;

12 Signed letter or letters from a qualified insurance agent or agents containing quotations for ALL OF the required insurance coverages set out in Section VIII of the Master Agreement for Professional Services and stating that the coverages are available to the respondent upon selection, if any, of the contract examiner pursuant to this RFQ. In the alternative, respondents may submit current certificates of insurance showing the required coverage is already in force and in effect. Respondent's insurance agents shall be ready to immediately issue policies and certificates upon notification of the Respondent's selection.

Time is of the essence and no Agreements will be executed without the coverage required. A successful Respondent's preliminary selection may be rescinded due to failure to have the required insurance coverage by the time set by the Comptroller;

13. Completed, signed, and initialed where applicable Criminal History Certification on the form set out on Exhibit E to this RFQ as posted on the addenda to the *Electronic State Business Daily* notice of issuance of this RFQ;

14. Completed and signed Family Code Certification on the form set out on Exhibit F to this RFQ as posted on the addenda to the *Electronic State Business Daily* notice of issuance of this RFQ;

15. Completed and signed Required Checklist for Statements of Qualifications on the form set out on Exhibit G to this RFQ as posted on the addenda to the *Electronic State Business Daily* notice of issuance of this RFQ;

16. Signed Statement of representation that the respondent and all persons listed as examiners in its Statement of Qualifications are neither respondents under any other Statement of Qualifications responding to this RFQ, nor are employed by, contracted with, and do not own any equity or debt interest in any other respondent to this RFQ; and

17. Compliance with any amendments, modifications, or other requirements and changes to the RFQ set out in the Official Response to Questions in connection with this RFQ and posted by the Comptroller on the *Electronic State Business Daily* prior to the Closing Date for this RFQ.

The above 17 items shall be submitted in the respondent's Statement of Qualification as separate and independent numbered sections corresponding to the above items. Failure to properly label and fully respond to each of the 17 items above shall result in disqualification of the respondent.

Mandatory Orientation Session: Respondents must attend, at their sole cost and expense, a mandatory orientation session to be conducted by the Comptroller in Austin on August 30, 2006 through September 1, 2006 or as soon thereafter as possible. Questions regarding this mandatory session should be submitted prior to the deadline for submission of other written questions on this RFQ. A contract examiner responding to this RFQ who has previously attended orientation offered by the Comptroller in connection with any of the five prior RFQs for contract examiners shall not be required to attend the above orientation session.

Evaluation and Award Procedure: All qualifying Statements of Qualifications received by the deadline above will be evaluated based on the evaluation criteria set out on Exhibit H attached to and made a part of this RFQ. The Comptroller will make the final selections in accordance with Chapter 2254, Subchapter A, Texas Government Code, in its sole discretion in the best interests of the Comptroller and the State of Texas. Notice of contract awards will be published in the *Electronic State Business Daily* and the *Texas Register* as soon as possible after all contracts, if any, resulting from this Statement of Qualifications, are fully executed. The *Electronic State Business Daily* may be accessed online at: <http://esbd.tbpc.state.tx.us/1380/sagency.cfm>.

Protests. Protests regarding this RFQ or actions taken under it shall be governed by the Comptroller's rule located at 34 TAC §1.72, Protests of Agency Purchases.

Limitations: The Comptroller reserves the right to accept or reject any or all Statements of Qualifications submitted in response to this RFQ. The Comptroller reserves the further right to evaluate individual examiners employed by a firm or who are employees of a respondent and approve of contract examiners on an individual basis based on the evaluation criteria. The Comptroller is not obligated to execute any contract or contracts or any specific number of contracts as a result of issuing

this RFQ. The Comptroller further reserves the right to issue additional RFQs or other solicitations for the contracted or similar services at any time as the Comptroller determines are necessary to ensure an adequate number of examiners for any assigned examination under this program or any similar program. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this RFQ. The Comptroller reserves the right to award contracts on the basis of the need to achieve appropriate examination coverage in all geographical areas of the State of Texas and/or nationwide and to evaluate respondents in a manner that will best achieve this need.

Summary of Schedule: The anticipated schedule is as follows: Issuance of RFQ by publication in the June 9, 2006 issue of the *Texas Register* and issuance of RFQ, including sample contract, on *Electronic State Business Daily* - June 9, 2006, 10:00 a.m. CZT; Questions - June 23, 2006, 2:00 p.m. CZT; Posting of Official Responses to Questions - June 30, 2006, 5:00 p.m. CZT or as soon thereafter as practical; Statements of Qualifications Due - July 14, 2006, 2:00 p.m. CZT; Contract Execution - August 15, 2006, or as soon thereafter as practical; Notice of Contract Awards posted on *Electronic State Business Daily* and *Texas Register* - August 15, 2006 or as soon thereafter as practical; Mandatory Orientation - August 30, 2006 through September 1, 2006; and Beginning of Examinations - September 2, 2005 upon completion of Orientation, or as soon thereafter as practical.

TRD-200602961

Pamela G. Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: May 31, 2006

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101., Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/05/06 - 06/11/06 is 18% for Consumer¹/Agricultural/Commercial² credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/05/06 - 06/11/06 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 06/01/06 - 06/30/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 06/01/06 - 06/30/06 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/06 - 09/30/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/06 - 09/30/06 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 07/01/06 - 09/30/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The lender credit card quarterly rate as prescribed by §346.101, Tex. Fin. Code¹ for the period of 07/01/06 - 09/30/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 07/01/06 - 09/30/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 07/01/06 - 09/30/06 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 07/01/06 - 09/30/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/06 - 06/30/06 is 8.00% for Consumer/Agricultural/Commercial credit thru \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/06 - 06/30/06 is 8.00% for Commercial over \$250,000.

¹ Credit for personal, family, or household use.

² Credit for business, commercial, investment, or other similar purpose.

³ For variable rate commercial transactions only.

⁴ Only for open-end credit as defined in §301.002(14), Tex. Fin. Code.

TRD-200602944

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 30, 2006

Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on September 16, 2005, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND: CARL BROWNING - HOUSTON, TX; ROXANNE DAVENPORT - ROUND ROCK, TX; CHERYL PEMBERTON - VICKSBURG, MS; RAMONA REINHARDT - OAKLAND, CA; ANGELIA SINGLETON - HOUSTON, TX; LINDA VERA - IRVING, TX; VICKI SMITH - LEWISVILLE, TX; CHRISSA MANSFIELD - ALLEN, TX; LEAH PRIDGEN - ALLEN, TX; STACI MORAN - MCKINNEY, TX; RUTH MCCLINTICK - PLANO, TX; JOY QUIROZ HERNANDEZ - AUSTIN, TX; KAILEE WYATT - LEWISVILLE, TX; and RACHEL RIDDLE - LEWISVILLE, TX.

Following the examination of applicants on April 28, 2006, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND: RHONDA MOORE - CEDAR PARK, TX; ELVA CHAPA - SAN ANTONIO, TX; MARTHA KOOMAR - CONROE, TX; CAROL DE LEON - SAN ANTONIO, TX; TIFFANY PINO - RICHMOND, TX; HERMINIA TORRES - SAN ANTONIO, TX; CHRISIT FUHRMANN - KRUGERVILLE, TX; PAULA VALDEZ - DALLAS, TX; TONYA LEBE - MCKINNEY, TX; CARRIE HALL - BEDFORD, TX; SHELLY CROSSLAND - GARLAND, TX; ANGELICA ROBELDO - DALLAS, TX; TEF-FANY STRICKLAND - MILLSAP, TX; ANNE MARTINEZ - MESQUITE, TX; CHRISTY SIEVERT - BRANDON, MS; ROBIN

CARTER - AUSTIN, TX; CAROLYNN HAYES - EL PASO, TX; CRYSTAL JOHNSON - DALLAS, TX; CLAUDIA ALMAGUER - DALLAS, TX; KRISTIN MCDOWELL - GRAND PRAIRIE, TX; CASSANDRA MCCARTY - CLEVELAND, TX; LEIGH GOOD - BURLESON, TX; MAYALE LOPEZ - EL PASO, TX; CINDY CARRANZA - HOUSTON, TX; SHERRI STADTER - ALVIN, TX; JULIE BLACKLOCK - CORPUS CHRISTI, TX; ALLISON CUTTILL - DALLAS, TX; LARISSA MCPHEARSON - FT. WORTH, TX; AMANDA LUCIDO - ROYSE CITY, TX; DIANE GOMEZ - SHAVANO PARK, TX; JENNIFER PANCRATZ - SCOTTSDALE, AZ; EMILY ELLIS - SAN ANTONIO, TX; KIMBERLY CUNNINGHAM - ROUND ROCK, TX; NATANYA TAYLOR - RICHWOOD, TX; KATHERINE BOHANNON - HOUSTON, TX; KERRIENNE BOND - HOUSTON, TX; BRITTANY GREEN - SCURRY, TX; and ANITA GARCIA - EL PASO, TX.

ORAL STENOGRAPHY: CARLA ANDERSON - WEATHERFORD, TX; JUDY GRILL - GRAND PRAIRIE, TX; and TERESA GUERRERO - FT. WORTH, TX.

TRD-200602936

Sheryl Jones

Administrator of Licensing

Court Reporters Certification Board

Filed: May 26, 2006

Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Marina Quest-Captain's Cove, L.P. dba Captain's Cove Marina, Docket No. 2003-0218-PST-E on May 22, 2006 assessing \$4,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Biggins, Staff Attorney at (210) 403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Azteca Milling, L.P., Docket No. 2003-1429-AIR-E on May 22, 2006 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel LaCaille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Century Industrial Coatings Incorporated, Docket No. 2003-1266-MLM-E on May 22, 2006 assessing \$14,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sami Awad dba Sammys Memorial Texaco Inc., Docket No. 2003-1114-PST-E on May 22, 2006 assessing \$4,800 in administrative penalties with \$960 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mehmood Lakhani dba C-Store, Docket No. 2002-0751-PST-E on May 22, 2006 assessing \$17,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department Of Transportation, Docket No. 2001-0232-AIR-E on May 23, 2006 assessing \$2,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AGA Enterprises, Inc., Docket No. 2003-1188-PST-E on May 22, 2006 assessing \$13,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sid Richardson Energy Services, Ltd., Docket No. 2003-0166-AIR-E on May 22, 2006 assessing \$70,288 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dublin, Docket No. 2004-0573-MWD-E on May 22, 2006 assessing \$7,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clara, Inc. dba Chevron Clara's Store and Bakery, Docket No. 2004-1603-PST-E on May 22, 2006 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lawn, Docket No. 2004-2098-PWS-E on May 22, 2006 assessing \$471 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 5510 Acorn L.L.C. dba Acorn Mobile Home Park, Docket No. 2004-2127-MWD-E on May 22, 2006 assessing \$2,240 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harmony Independent School District, Docket No. 2005-0191-MWD-E on May 22, 2006 assessing \$4,320 in administrative penalties with \$864 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Apro Corporation dba Flagship Car Wash and Lube Center, Docket No. 2005-0230-PST-E on May 22, 2006 assessing \$5,200 in administrative penalties with \$1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Midway Truck Stop, Inc., Docket No. 2005-0278-PST-E on May 22, 2006 assessing \$8,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S. M. S. Enterprises, Inc. dba AZ Food Store, Docket No. 2005-0689-PST-E on May 22, 2006 assessing \$2,652 in administrative penalties with \$530 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dodd City, Docket No. 2005-0740-MWD-E on May 22, 2006 assessing \$15,350 in administrative penalties with \$3,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding William C. Barfield, Docket No. 2005-0883-LII-E on May 22, 2006 assessing \$263 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Volente Beach Restaurant, Docket No. 2005-0932-PWS-E on May 22, 2006 assessing \$1,588 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Lubrizol Corporation, Docket No. 2005-1020-AIR-E on May 22, 2006 assessing \$6,396 in administrative penalties with \$1,279 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tashi Enterprise, Inc. dba Star Jet Truck Stop, Docket No. 2005-1202-PWS-E on May 22, 2006 assessing \$2,980 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hamshire Community Water Supply Corporation, Docket No. 2005-1229-PWS-E on May 22, 2006 assessing \$323 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shana Horton, Staff Attorney at (512) 239-1088, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles Harrell, Docket No. 2005-1273-LII-E on May 22, 2006 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cemex Construction Materials, L.P., Docket No. 2005-1311-MLM-E on May 22, 2006 assessing \$12,600 in administrative penalties with \$2,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Taylor Petroleum Companies, Inc., Docket No. 2005-1349-PWS-E on May 22, 2006 assessing \$2,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Wayne Chadick dba A & A Longhorn Trailer Park, Docket No. 2005-1368-PWS-E on May 22, 2006 assessing \$2,505 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Horall Ingram Jones, Jr. dba Jones Septice Tank Cleaning, Docket No. 2005-1388-MLM-E on May 22, 2006 assessing \$10,890 in administrative penalties with \$2,178 deferred.

Information concerning any aspect of this order may be obtained by contacting Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Juan Jose Ruiz, Docket No. 2005-1434-LII-E on May 22, 2006 assessing \$625 in administrative penalties with \$125 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Elsa, Docket No. 2005-1526-PWS-E on May 22, 2006 assessing \$655 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James T. Marcum, Jr. and Joseph H. Marcum, Docket No. 2005-1599-LII-E on May 22, 2006 assessing \$625 in administrative penalties with \$125 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dynegy Midstream Services, Limited Partnership, Docket No. 2005-1636-AIR-E on May 22, 2006 assessing \$9,375 in administrative penalties with \$1,875 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Beall Concrete Enterprises, Ltd., Docket No. 2005-1701-IWD-E on May 22, 2006 assessing \$4,080 in administrative penalties with \$816 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amerada Hess Corporation, Docket No. 2005-1761-IWD-E on May 22, 2006 assessing \$2,125 in administrative penalties with \$425 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eisenberg Properties, Ltd., Docket No. 2005-1763-MSW-E on May 22, 2006 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wolf Hollow I, L.P., Docket No. 2005-1765-IWD-E on May 22, 2006 assessing \$1,540 in administrative penalties with \$308 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Comtex Dairies, L.L.C., Docket No. 2005-1815-AGR-E on May 22, 2006 assessing \$2,825 in administrative penalties with \$565 deferred.

Information concerning any aspect of this order may be obtained by contacting Anita Keese, Enforcement Coordinator at (956) 430-6034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rodney Warren McNeal dba McNeal Dairy, Docket No. 2005-1834-AGR-E on May 22, 2006 assessing \$5,200 in administrative penalties with \$1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shawn & Sameer, Inc. dba Breckenridge Minit Mart, Docket No. 2005-1848-PST-E on May 22, 2006 assessing \$7,740 in administrative penalties with \$1,548 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Camp Eagle, Docket No. 2005-1854-PWS-E on May 22, 2006 assessing \$1,885 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding K-T Galvanizing Co., Inc., Docket No. 2005-1863-AIR-E on May 22, 2006 assessing \$9,000 in administrative penalties with \$1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Kemp, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cardinal Meadows Improvement District, Docket No. 2005-1866-MWD-E on May 22, 2006 assessing \$3,210 in administrative penalties with \$642 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dallas Convenience Stores Inc. dba Mesquite Mini Mart, Docket No. 2005-1877-PST-E on May 22, 2006 assessing \$15,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pflugerville, Docket No. 2005-1887-PWS-E on May 22, 2006 assessing \$2,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Beaumont, Docket No. 2005-1901-MWD-E on May 22, 2006 assessing \$8,750 in administrative penalties with \$1,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Penreco, Docket No. 2005-1902-AIR-E on May 22, 2006 assessing \$20,750 in administrative penalties with \$4,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hillsboro, Docket No. 2005-1923-PWS-E on May 22, 2006 assessing \$2,600 in administrative penalties with \$520 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda King-Zrubek, Enforcement Coordinator at (512) 239-1860, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A J & P Investors, Inc. dba Poolville One Stop, Docket No. 2005-1929-PST-E on May 22, 2006 assessing \$7,920 in administrative penalties with \$1,584 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines East Texas L.P., Docket No. 2005-1941-AIR-E on May 22, 2006 assessing \$3,250 in administrative penalties with \$650 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cody Byrom, Docket No. 2005-1950-MSW-E on May 22, 2006 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Anita Keese, Enforcement Coordinator at (956) 430-6034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wickson Creek Special Utility District Grimes County, Docket No. 2005-1954-PWS-E on May 22, 2006 assessing \$313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Neutze Properties, Ltd. dba Kwik Pantry FFP 5167, Docket No. 2005-1957-PST-E on May 23, 2006 assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wright City Water Supply Corporation, Docket No. 2005-1968-PWS-E on May 22, 2006 assessing \$330 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stonewater Pipeline Company, L.P., Docket No. 2005-1972-AIR-E on May 22, 2006 assessing \$4,750 in administrative penalties with \$950 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zoltek Corporation, Docket No. 2005-1983-IWD-E on May 22, 2006 assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyondell-Citgo Refining LP, Docket No. 2005-1985-AIR-E on May 22, 2006 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GL James Investments, L.L.C. dba Country Boy Store, Docket No. 2005-2014-PST-E on May 22, 2006 assessing \$7,200 in administrative penalties with \$1,440 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Camino Bay Water Supply Corporation, Docket No. 2005-2020-PWS-E on May 22, 2006 assessing \$645 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Talley Water Supply Corporation, Docket No. 2005-2021-PWS-E on May 22, 2006 assessing \$313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of West Tawakoni, Docket No. 2005-2022-PWS-E on May 22, 2006 assessing \$1,530 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding International A.L.E.R.T. Academy, Docket No. 2005-2034-PWS-E on May 22, 2006 assessing \$328 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anita Keese, Enforcement Coordinator at (956) 430-6034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petroleum Wholesale, L.P. dba Sunmart 153 and Sunmart 289, Docket No. 2005-2050-PST-E on May 22, 2006 assessing \$3,670 in administrative penalties with \$734 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning, Docket No. 2005-2056-AIR-E on May 22, 2006 assessing \$3,042 in administrative penalties with \$608 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Len D. Jordan dba Sail Haven, Docket No. 2005-2063-PWS-E on May 22, 2006 assessing \$323 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Avis Rent A Car System, Inc., Docket No. 2005-2065-AIR-E on May 22, 2006 assessing \$1,200 in administrative penalties with \$240 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air System Components LP, Docket No. 2006-0008-AIR-E on May 22, 2006 assessing \$1,925 in administrative penalties with \$385 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Kemp, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunset Logistics, Inc., Docket No. 2006-0036-AIR-E on May 22, 2006 assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bridgeport Utilities, LLC, Docket No. 2006-0037-MWD-E on May 22, 2006 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Reno, Docket No. 2006-0054-PWS-E on May 22, 2006 assessing \$323 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Municipal Power Agency, Docket No. 2006-0064-PWS-E on May 22, 2006 assessing \$345 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 490-3095, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. W. Turner Construction, Inc. dba James W. Construction LTD, Docket No. 2006-0094-MSW-E on May 22, 2006 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200602954

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 31, 2006



Notice of District Hearing

Notice mailed May 24, 2006

TCEQ Docket No. 2006-0453-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for dissolution (Application) of Galveston County Municipal Utility District No. 20 (District). The Application was filed with the TCEQ and included a petition from William H. Frey, President of Frey Development Companies, Inc., a general partner in Saltgrass 300, Ltd, being owner of property located within the District. The TCEQ will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, Title 30, Chapter 293 of the Texas Administrative Code, and the procedural rules of the TCEQ. The TCEQ will conduct the hearing at: 9:30 a.m., Wednesday, September 6, 2006, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas.

The District was created by the Texas Commission on Environmental Quality on November 10, 1987. The District had the authority to operate as a municipal utility district under the general law provisions in Texas Water Code Chapters 49 and 54. The petition filed with the Application asserts that dissolution is desirable and necessary because the District has been inactive and its statutory authority will not benefit the land within its boundaries.

The petition also states that the District: (1) has not performed any of the functions for which it was created for five consecutive years preceding the date of the Application, (2) is financially dormant, and (3) has no outstanding bonded indebtedness. An affidavit from the State Comptroller of Public Accounts, included in the Application, certifies that the District has no bonded indebtedness.

If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74 of the Texas Property Code.

The TCEQ may grant a contested case hearing on this Application if a written hearing request is filed within 30 days after the newspaper publication of this notice. The TCEQ may approve the Application unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Applicant and the TCEQ Docket Number; (3) the statement

"I/we request a contested case hearing"; and (4) a brief description of how you would be affected by the request in a way uncommon to the general public. You may also submit your proposed adjustments to the Application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

Si desea información en Español, puede llamar al 1-800-687-4040.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD), at least one week prior to the hearing.

TRD-200602952

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 31, 2006



Notice of Meeting on July 20, 2006, in Houston, Texas Concerning the ArChem Company/Thames Chelsea Chemical Company USA Superfund Site

The purpose of the meeting is to obtain public input and information concerning the proposed remedy for the ArChem Company/Thames Chelsea Chemical Company USA Site (site).

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of a proposed selection of remedy for the ArChem Company/Thames Chelsea Company USA Site. In accordance with 30 TAC §335.349(a) concerning requirements for the remedial action, and Texas Health and Safety Code (THSC), §361.187 concerning the proposed remedial action, a public meeting regarding the commission's selection of a proposed remedy for the site shall be held. The statute requires that the commission publish a notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. This notice was also published in the *Houston Chronicle* on June 8, 2006. The public meeting is scheduled for July 20, 2006, 7:00 p.m., at Dobie High School, 11111 Beamer Road, Houston, Texas. The public meeting is not a contested case hearing under Texas Government Code, Chapter 2001.

The ArChem Company/Thames Chelsea Company USA Site was proposed for listing on the state registry of Superfund sites in the May 4, 2001, edition of the *Texas Register* (26 TexReg 3413). The approximate 10-acre site is located at 13103 Conklin Lane near the intersection of Conklin Lane and Beltway 8 in southeast Houston, Harris County, Texas.

The site is a former specialty chemical manufacturing facility, which operated from the 1970s until 1991. A wide range of organic chemicals was used in manufacturing and processing operations at the site. Operations ceased after the Thames Chelsea Chemical Company aban-

doned the facility. The Texas Water Commission (a predecessor of the TCEQ) and the United States Environmental Protection Agency (EPA) performed several removal actions in the 1990s to address the immediate public health and environmental concerns from the deteriorating chemical drums and above ground storage tanks (ASTs) at the site.

Current structures at the facility include an office and warehouse building, concrete foundations in the former process areas, a sludge drying bed, and containment areas associated with former ASTs. Two surface impoundments associated with wastewater from the operations are located in the eastern portion of the facility.

The H.B. Fuller Company was an owner/operator of the facility before selling the property to the ArChem Company. H.B. Fuller was reported to have manufactured industrial latex coatings and adhesives based on polyvinyl acetate, ethylene vinyl acetate copolymers, and asphaltic emulsions. After a warehouse fire in 1977, H.B. Fuller sold the property to ArChem. The ArChem Company is reported to have produced epoxy curing agents, nitroanisole, and antimony triacetate. The company is reported to have handled or used a wide variety of chemicals, which are detailed in the Hazard Ranking Survey (HRS) and listed in the Phase 2 Field Sampling Plan (FSP).

In 1991 the site was reported to contain at least 15 hazardous waste units used in the management of 14 or more P (acute hazardous wastes) and U (generally hazardous wastes) listed wastes (as defined by the EPA). Approximately 2,000, 55-gallon drums in various states of deterioration were on the site. All sumps, secondary containment systems, and roll-off containers were found full of materials (liquids and solids). The two surface impoundments were also full; and their capacities were estimated at 250,000 and 500,000 gallons. Spills and surface contamination were widespread throughout the site with evidence of contamination in drainage ditches.

In September 1991 the site was determined to be abandoned and was later referred to the State Superfund Program. Two removal actions by the Texas Water Commission and the EPA in 1992 and 1993, and a removal action by a group of potentially responsible parties (PRPs) removed most of the drums, surface tanks, and other materials left on site. The property was fenced to restrict access. A Remedial Investigation (RI) conducted by the TCEQ identified several areas where chemicals of concern (COC) were greater than the critical protective concentration level (PCL). These COCs include antimony, lead, mercury, volatile organic compounds (benzene, toluene and tetrahydrofuran), and semi-volatile organic compounds (2-nitroaniline and furfural). All of these areas have been horizontally and vertically delineated.

Surface water in the west impoundment meets the specifications in the TCEQ issued wastewater discharge criteria for the site. The water in the east impoundment exceeds the discharge criteria for total organic carbon (TOC). A feasibility study, dated August 2005, screened and evaluated remedial alternatives which could be used to remediate the site. The Feasibility Study report developed four alternatives for remediation of soils and two alternatives for remediation of the surface water in the impoundments. The commission prepared the Proposed Remedial Action Document on May 15, 2006. This document presents the proposed remedy and justification for how this remedy demonstrates compliance with the relevant cleanup standards.

Based on the calculated volume of contaminated soil, the recommended remedial alternative is excavation and off-site disposal of the contaminated soil. The recommended alternative is the most cost effective, reasonable, and appropriate remedy to address the site. This remedial alternative includes the excavation and off-site disposal of soil in both impoundments and contaminated site soils. It is estimated that 5,000 cubic yards of in-place soil including the land farm soils would require disposal.

The surface water from the impoundments will be discharged to Harris County flood control ditch A 119-06-00 along the south side of the site. The ditch widens and turns at a point approximately 3/4 of a mile west of the site. At this point, the ditch flows south approximately one and a half miles before discharging into Turkey Creek. Water from the east impoundment will be treated to comply with the TOC discharge requirements. Discharge criteria allow up to 200 gallons per minute to be discharged from the site. The groundwater at the site is designated as Class 3 based on yield, and it is not impacted. Therefore, no remediation is needed for the groundwater.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m. July 19, 2006, and should be sent in writing to Mr. Subhash C. Pal, P.E., Project Manager, TCEQ, Remediation Division, MC 136, P. O. Box 13087, Austin, Texas 78711-3087, or facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on July 20, 2006.

A portion of the record for this site including documents pertinent to the proposed remedy is available for review during regular business hours at the Bracewell Branch Library, 10115 Kleckly, Houston, Texas. Copies of the complete public record file may be obtained during business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the state Superfund program at <http://www.tceq.state.tx.us/remediation/superfund/state/archem.html>.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-5674. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call John Flores, TCEQ Community Relations, at 1-800-633-9363, extension 5674.

TRD-200602950

Stephanie Bergeron Perdue

Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: May 30, 2006



Notice of Water Quality Applications

The following notices were issued during the period of May 4, 2006 through May 30, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P. O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

Angelina and Neches River Authority has applied for a renewal of TPDES Permit No. 11620-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 370,000 gallons per day. The facility is located approximately 0.6 mile northeast of U. S. Highway 69, approximately 1.5 miles northwest of the City of Lufkin, and 1.9 miles southeast of the intersection of U.

S. Highway 69 and Farm-to-Market Road 2021 in Angelina County, Texas.

ARO Partners, c/o Terra Associates, Inc. has applied for a new permit, proposed TPDES Permit No. WQ0014683001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility will be located 1,725 feet southeast of the intersection of Farm-to-Market Road 529 and Peak Road in Harris County, Texas.

Boggs Sugar Pines, LLC has applied for a renewal of TPDES Permit No. 14049-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day. TCEQ received this application on December 28, 2005. The facility is located approximately 1,000 feet due north of West Circle Drive and approximately 3,000 feet due west of the intersection of West Circle Drive and Farm-to-Market Road 105 in Orange County, Texas.

Charterwood Municipal Utility District has applied for a major amendment to TPDES Permit No. WQ0011410002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to an annual average flow not to exceed 1,650,000 gallons per day. The facility is located approximately 3.5 miles northwest of the intersection of State Highway 249 (West Montgomery Road) and Farm-to-Market Road 1960, on the south bank of Pillot Gully, at 15820 Quill Drive, in the City of Houston, in Harris County, Texas.

Circle T Promotions, Ltd. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014678001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day. The facility will be located 4.2 miles northwest of the City of Hamilton on the southwest side of State Highway 36 in Hamilton County, Texas.

City of Arp has applied for a renewal of TPDES Permit No. 10511-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 211,000 gallons per day. The facility is located approximately 0.5 mile south of the intersection of State Highway 135 and State Highway Spur 80 and approximately 1 mile northeast of the intersection of State Highway 135 and Farm-to-Market Road 345 in Smith County, Texas.

City of Bullard has applied for a renewal of TPDES Permit No. 11787-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 213,000 gallons per day. The facility is located approximately 2,600 feet southwest of the Bullard School and approximately 3,000 feet west-southwest of the intersection of Farm-to-Market Road 344 and Oak Street in Cherokee County, Texas.

City of Grapeland has applied for a renewal of TPDES Permit No. 10181-002, which authorizes discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located east of U. S. Highway 287, approximately 1,000 feet north of the intersection of U. S. Highway 287 and Farm-to-Market Road 2423 in Houston County, Texas.

City of Lone Oak has applied for a renewal of TPDES Permit No. 10760-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located east of Bull Creek, approximately 0.5 mile south of the intersection of U. S. Highway 69 and Farm-to-Market Road 1571 in Hunt County, Texas.

City of Weatherford Municipal Utility Board of Trustees has applied for a renewal of TPDES Permit No. 14198-001 to authorize the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 636,000 gallons per day. The facility is lo-

cated approximately 1,400 feet east and 2,100 feet south of the pump station at the dam of Lake Weatherford in Parker County, Texas.

City of Wells has applied for a renewal of TPDES Permit No. 11196-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 900 feet north of U. S. Highway 69 on the west side of Red Bayou, east of the City of Wells in Cherokee County, Texas.

Dos Republicas Coal Partnership, which operates a sub-bituminous coal mine, has applied for a renewal of TPDES Permit No. WQ0003511000, which authorizes the discharge of storm water and mine seepage from the active mining area on an intermittent and flow variable basis via Outfalls 001 through 013. The facility is located on the northeast side of State Highway 1588, three miles northeast of U. S. Highway 277, and approximately five miles northeast of the City of Eagle Pass, Maverick County, Texas.

Entergy Gulf States, Inc., which operates the Sabine Generating Plant, has applied for a renewal of TPDES Permit No. WQ0000336000, which authorizes the discharge of once through cooling water and previously monitored effluents (PME) (PME consists of low volume wastewater, storm water, metal cleaning waste, cooling tower blowdown, and treated sanitary sewage on an intermittent and flow variable basis via interal Outfalls 201, 301, 401, 501, 601, 701 and 801) at a daily average flow not to exceed 1,306,000,000 gallons per day via Outfall 001. The facility is located approximately one and one-half (1.5) miles south of Farm-to-Market (FM) Road 1442 at a point approximately two and one-half (2.5) miles west of the FM Road 1442 and State Highway 87 intersection southwest of the City of Orange, Orange County, Texas.

Explorer Pipeline Company, which operates the Explorer Pipeline Greenville Station, has applied for a renewal of TPDES Permit No. WQ0002395000, which authorizes the discharge of processed wastewater consisting of tank bottom water and storm water from a refined petroleum products pipeline tankage station on an intermittent and flow variable basis via Outfall 001. The facility is located at 2856 County Road 2168, approximately 1.3 miles north of the intersection of Interstate Highway 30 and Farm-to-Market Road 36 and southeast of the City of Caddo Mills, Hunt County, Texas.

Hardin County Water Control and Improvement District No. 1 has applied for a renewal of TPDES Permit No. 10678-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located north of Little Pine Island Bayou, approximately 2 miles north of the intersection of State Highway 105 and Pine Wood Boulevard in Hardin County, Texas.

Houston Intercontinental Trade Center, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014671001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located 4,400 feet north of Farm-to-Market 1488 and 10,100 feet west of Interstate Highway 45 in southwest Montgomery County, Texas.

Lamar Power Partners, LP, which operates the Lamar Power Project, a combined cycle electric generating station, has applied for a major amendment to TPDES Permit No. WQ0004127000 to authorize the removal of restriction of the discharge of free available chlorine from any unit for more than two hours in any one day and simultaneous multi-unit chlorination; removal of monitoring requirements for aluminum and requirements pertaining to temporary variance; and the reduction of toxicity testing frequency using Ceriodaphnia Dubia to once per six months at Outfall 001. The current permit authorizes the discharge of cooling tower blowdown, filter backwash, and low volume

waste (floor drain waste, boiler blowdown, reverse osmosis reject water, and evaporator cooler blowdown) at a daily average flow not to exceed 1,200,000 gallons per day via Outfall 001. The facility is located on the east side of Farm-to-Market Road 137, approximately 1/2 mile south of the intersection of Farm-to-Market Road 137 and 286 Loop Road, southeast of the City of Paris, Lamar County, Texas.

North Texas District Council Assemblies of God has applied for a renewal of TPDES Permit No. 13847-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 21,000 gallons per day. The facility is located approximately 400 feet southeast of the east end of Soil Conservation Service Dam No. 56, and approximately 2.5 miles east northeast of the City of Maypearl in Ellis County, Texas.

Texas Airstream Harbor, Inc., has applied for a renewal of TPDES Permit No. 11895-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately 0.5 mile northwest of State Highway 147 at a point approximately 300 feet southerly from the shoreline of Sam Rayburn Reservoir and approximately 5 miles northeast of the City of Zavalla in Angelina County, Texas.

Texas Parks and Wildlife Department applied for a new permit, Proposed Permit No. WQ0014676001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 10,050 gallons per day via surface irrigation of 3.63 acres of non-public access land. This facility was previously permitted as TCEQ Permit No. 11365-001 which expired on September 1, 2005. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located within the Lake Brownwood State Park, 1.42 miles east of the intersection of Park Road 15 and Farm-to-Market Road 2559 in Brown County, Texas.

Tyson Farms, Inc., which operates a poultry processing facility, has applied for a renewal of TPDES Permit No. WQ0002064000, which authorizes the discharge of process wastewater, utility wastewater, domestic wastewater, and storm water at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 1019 Shelbyville Street in the City of Center, Shelby County, Texas.

TRD-200602953

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 31, 2006



Notice of Water Rights Application

Notices issued May 25, 2006, through May 26, 2006

Application No. TA-12015 (WRTP 12015); Voyager Gas Corporation, Applicant, 12225 Greenville Ave #870, Dallas, TX 75243, has applied for a Temporary Water Use Permit to divert and use 450 acre-feet of water within a three (3) year period from the Double Mountain Fork Brazos River, Brazos River Basin in Garza County. The application and fees were received on January 31, 2006. Additional information and fees were received on March 21, and March 30, 2006. The application was declared administratively complete and accepted for filing on March 31, 2006. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by June 14, 2006. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by June 14, 2006.

Application No. 5387A (WRPERM 5387); Trinity Materials, Inc., 401 South I-45, Ferris, Texas 75125, applicant, has applied for an amendment to Water Use Permit No. 5387 to change the locations of the diversion point, place of use, and off-channel reservoir from Dallas County on the Trinity River, Trinity River Basin, downstream to Kaufman County and also seeks to add a new diversion point from the off-channel reservoir. The application was received on September 13, 2005. Additional information and fees were received on December 5, 2005 and February 27, March 10, May 3 and May 11, 2006. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 29, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by June 15, 2006. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by June 15, 2006.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200602951

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 31, 2006

Texas Health and Human Services Commission

Notification of Consulting Procurement

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for consultant services to assist the state of Texas in optimization of case management to enhance the quality outcomes and cost savings throughout the Texas HHSC departments as described in Section 32.0551 of the Texas Human Resources Code, as amended by Section 8 of Senate Bill 1188, 79th Texas Legislature, Regular Session, 2005.

The RFP is located in full on HHSC's Business Opportunities Page under "Contracting Opportunities" link at http://www.hhsc.state.tx.us/about_hhsc/Bu-sOpp/BO_opportunities.html and on TBPC's ESBD website <http://esbd.tbpc.state.tx.us/1380/sagency.cfm>. HHSC also posted notice of the procurement on the Texas Marketplace on June 1, 2006.

The mission objectives are:

- * create and coordinate staffing and other administrative efficiencies for case management initiatives across the commission and health and human services departments;

- * optimize federal funding revenue sources and maximize the use of state funding resources for case management initiatives across the commission and health and human services departments;

- * evaluate the cost-effectiveness of developing intensive case management and targeted interventions for all Medicaid recipients who are aged, blind, or disabled;

- * identify Medicaid programs or protocols in existence on the effective date of this section that are not resulting in their anticipated cost savings or quality outcomes. The commission shall enhance or replace these programs or protocols with targeted strategies that have demonstrated success in improving coordination of care and cost savings within similar Medicaid recipient populations; and

- * conduct a study to determine the feasibility of combining the utilization management, case management, care coordination, high-cost targeting, provider incentives, and other quality and cost-control measures implemented with respect to the Medicaid program under a single federal waiver, which may be a waiver under Section 1915(c) or under Section 1115(a). If the commission determines that the combination is feasible, develop the combined program.

The Health and Human Services Commission's Sole Point-Of-Contact for this procurement is:

Alice Hanna, Procurement Manager

Texas Health and Human Services Commission

11209 Metric Blvd., Bldg. H

Mail Code: H-350

Austin, Texas 78758

(512) 491-1315

alice.hanna@hhsc.state.tx.us

All questions regarding the RFP must be sent in writing to the above-referenced contact by 3:00 PM Central Time on June 15, 2006. HHSC will post all written questions received with HHSC's responses on its website on June 29, 2006, or as they become available. All proposals must be received at the above-referenced address on or before 3:00 PM Central Time on July 13, 2006. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other

obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200602977

Martin Zelinsky

Assistant General Counsel

Texas Health and Human Services Commission

Filed: May 31, 2006



Department of State Health Services

Correction of Error

The Department of State Health Services adopted amendments to 25 TAC §§448.603, 448.701, and 448.706, concerning the regulation of training, client bill of rights, and restraint and seclusion in chemical dependency treatment facilities, in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4433). The agency submitted the notice of adopted rulemaking with an error.

In §448.706(s) on page 4438, the first sentence as published does not remove the word "available" before "staff members" to properly reflect a response to a comment in the preamble concerning the subsection. The first sentence of subsection (s) should read:

"(s) As soon as possible after an episode of restraint or seclusion, staff members involved in the episode, supervisory staff, the client, the legally authorized representative, if any, and, with the consent of the client, family members must meet to discuss the episode. . . "

TRD-200602980



Notice of Emergency Cease and Desist Order on Adventure Dental Careers, LLC, dba Adventure Dental Careers

Notice is hereby given that the Department of State Health Services (department) ordered Adventure Dental Careers, LLC, doing business as Adventure Dental Careers (registrant-R29331-000) of Seabrook to cease and desist from deliberately applying radiation to individuals for training purposes with radiation machines.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200602982

Cathy Campbell

General Counsel

Department of State Health Services

Filed: May 31, 2006



Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following x-ray machine or laser registrants: Healthsouth Corporation General Partnership, Dallas, M00763; Brazos Professional Building, Marlin, R20609; All Smiles Dental Center, San Antonio, R20730; Kenneth D. Garrett, D.C., Richardson, R22032; Family Foot Doctor, Houston, R22839; Prime Service Center Inc., Woodstock, Georgia, R26972; Absolute Wellness & Rehab of Texas, P.A., Dallas, R28315.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation ma-

chine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Radiation Program Officer, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200602937

Cathy Campbell

General Counsel

Department of State Health Services

Filed: May 30, 2006



Texas Higher Education Coordinating Board

Notice of Amended Request for Qualifications

Pursuant to Texas Government code, Chapter 2254, Subchapter A, the Texas Higher Education Coordinating Board (THECB) announces its issuance of an Amended Request for Qualifications (RFQ) from qualified independent persons or firms to perform certain financial or management control audits for State Fiscal Year 2006. The successful respondent will be expected to begin performance of the contract on or about July 10, 2006.

The Request for Qualifications, THECB's financial statements, and other information regarding the RFQ may be obtained by writing to Anthony Tegbe, Internal Auditor, Texas Higher Education Coordinating Board, 1200 E. Anderson Lane, Austin, Texas 78752, or by e-mail to Anthony.Tegbe@thecb.state.tx.us, or by accessing THECB's website at www.thecb.state.tx.us.

Responses must be received no later than 10:00 a.m., June 23, 2006.

All responses will be evaluated by a committee based upon the evaluation criteria and procedures set forth in the Amended Request for Qualifications.

THECB reserves the right to accept or reject any or all responses submitted. THECB is not obligated to execute a contract on the basis of this notice or the distribution of any RFQ. THECB shall not pay for any costs incurred by any entity in responding to this notice or the RFQ.

The anticipated schedule of events pertaining to this RFQ is as follows: responses due June 23, 2006; contract execution on July 10, 2006; performance of contract to begin on July 17, 2006.

TRD-200602960

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: May 31, 2006

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Meadowlands Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Emmott Elementary School, 11750 Steepleway Boulevard, Houston, Harris County, Texas 77065, at 6:00 p.m. on June 27, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$13,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to H.T. Seattle Slew, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 236-unit multifamily residential rental development located at approximately the northwest corner of Steeplepark Drive and Steepleway Boulevard, Harris County, Texas. A physical address has not been assigned by the City of Houston. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941 Austin, Texas 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200602906

Michael G. Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: May 24, 2006

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Texas Department of Insurance

Correction of Error

The Texas Department of Insurance adopted new §§21.3901 - 21.3905, concerning high deductible health plans, in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4439). The agency submitted the notice of adopted rulemaking with two errors.

The following language should replace the second, third, and fourth complete paragraphs on page 4440, second column:

"For: Office of Public Insurance Counsel. Against: Texas Association of Health Plans, American Health Insurance Plans, Texas Association of Underwriters, Texas Association of Life and Health Insurers, Unicare, and Blue Cross and Blue Shield of Texas."

The text of §21.3902 on page 4441, first column, is incorrect. The following language should replace §21.3902(8)(A) - (F):

"(8) Preventive care--Has the meaning assigned by Section 223(c)(2)(C), Internal Revenue Code of 1986."

TRD-200602962

◆ ◆ ◆

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name of PROGENY MARKETING INNOVATIONS, INC. to AFFINION BENEFITS GROUP, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application to change the name of GALIC DISBURSING COMPANY to GREAT AMERICAN PLAN ADMINISTRATORS, INC., a foreign third party administrator. The home office is CINCINNATI, OHIO.

Application to change the name of WAUSAU BENEFITS, INC. to WAUSAU BENEFITS, INC. (using the assumed name FISERV HEALTH-WAUSAU BENEFITS), a foreign third party administrator. The home office is WAUSAU, WISCONSIN.

Application to change the name of BENESIGHT, INC. to BENESIGHT, INC. (using the assumed name FISERV HEALTH-BENESIGHT), a foreign third party administrator. The home office is DOVER, DELAWARE.

Application to change the name of BENEFIT PLANNERS LIMITED, L.L.P. to BENEFIT PLANNERS LIMITED, L.L.P. (using the assumed name FISERV HEALTH-BENEFIT PLANNERS), a domestic third party administrator. The home office is BOERNE, TEXAS.

Application to change the name of TODAY'S VISION FRANCHISING CORPORATION to OPNETUSA, INC. (using the assumed name OPNET USA), a domestic third party administrator. The home office is HOUSTON, TEXAS.

Application to change the name and home office of FINANCIAL ADMINISTRATIVE SERVICES CORPORATION, ENGLEWOOD, COLORADO to FASCORE, LLC, a foreign third party administrator. The home office is GREENWOOD VILLAGE, COLORADO.

Application to change the name of DAVID K. YOUNG, (using the assumed name of DAVID K. YOUNG, TPA) to DAVID K. YOUNG CONSULTING, LLC, a domestic third party administrator. The home office is SAN ANTONIO, TEXAS.

Application to change the name of ERISA ADMINISTRATIVE SERVICES, INC. to COMPUSYS/ERISA GROUP, INC., a domestic third party administrator. The home office is AUSTIN, TEXAS.

Application to change the name of STERLING RISK MANAGEMENT SERVICES, INC. to CITIZENS MANAGEMENT, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application to change the name of LINDA J. HOSFORD (using the assumed name of FLEX BENEFIT ADMINISTRATORS) to JOLIN BENEFIT ADMINISTRATORS, LLC (using the assumed name FLEX

BENEFIT ADMINISTRATORS), a domestic third party administrator. The home office is HOUSTON, TEXAS.

Application to change the name of DELTA DENTAL PLAN OF CALIFORNIA to DELTA DENTAL OF CALIFORNIA, a foreign third party administrator. The home office is SAN FRANCISCO, CALIFORNIA.

Application to change the name of CHS ADMIN, LLC to NEW SOURCE BENEFITS, LLC), a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200602905

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: May 24, 2006



Texas Department of Licensing and Regulation

Vacancy on Advisory Board on Barbering

The Texas Department of Licensing and Regulation (Department) announces a vacancy on the Advisory Board on Barbering (Board) established by Texas Occupations Code, Chapter 1601. The pertinent rules may be found in 16 TAC §82.65. The purpose of the Advisory Board on Barbering is to advise the Texas Commission of Licensing and Regulation and the Department on: education and curricula for applicants; the content of examinations; proposed rules and standards on technical issues related to barbering; and other issues affecting barbering.

The Board is composed of five members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of two members who are engaged in the practice of barbering as a Class A barber and do not hold a barbershop permit; two members who are a barbershop owner and hold a barbershop permit; and one member who holds a permit to conduct or operate a barber school. Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year.

This announcement is for one position of a Class A barber who does not hold a barbershop permit.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 463-6599,

FAX (512) 475-2874 or Email jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us. Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200602915

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: May 25, 2006



Texas Lottery Commission

Instant Game Number 624 "4's Galore"

1.0 Name and Style of Game.

A. The name of Instant Game No. 624 is "4's GALORE". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 624 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 624.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$30.00, \$50.00, \$60.00, \$200 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 624 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$6.00	SIX\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$60.00	SIXTY
\$200	TWO HUND
\$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 624 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
FOR	\$4.00
FIV	\$5.00
SIX	\$6.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$60.00, \$100 or \$200.

I. High-Tier Prize - A prize of \$1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (624), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 624-0000001-001.

L. Pack - A pack of "4's GALORE" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "4's GALORE" Instant Game No. 624 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "4's GALORE" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) Play Symbols. If a player reveals a "4" play symbol in the play area, the player wins the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. Non-winning play symbols will never occur with the same prize symbol (i.e. 5 and \$5).

E. The "4" will only appear as dictated by the prize structure.

F. The \$4 prize symbol will only appear when it is a winning prize symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "4's GALORE" Instant Game prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$30.00, \$60.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$60.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "4's GALORE" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "4's GALORE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "4's GALORE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "4's GALORE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 624. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 624 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,008,000	11.90
\$2	1,200,000	10.00
\$3	96,000	125.00
\$4	72,000	166.67
\$5	48,000	250.00
\$6	48,000	250.00
\$10	48,000	250.00
\$20	36,000	333.33
\$30	11,000	1,090.91
\$60	8,000	1,500.00
\$100	1,500	8,000.00
\$200	1,350	8,888.89
\$1,000	250	48,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.65. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 624 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 624, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200602938
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 30, 2006



Instant Game Number 679 "Texas Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 679 is "TEXAS TRIPLER". The play style is "match 3 of 9 with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 679 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 679.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, \$1.00, \$2.00, \$3.00, \$6.00, \$9.00, \$18.00, \$27.00, \$54.00, \$81.00, \$100, \$300 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 679 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$6.00	SIX\$
\$9.00	NINE\$
\$18.00	EGTN
\$27.00	TWY SVN
\$54.00	FTY FOR
\$81.00	ETY ONE
\$100	ONE HUN
\$300	THR HUN
\$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 679 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
SIX	\$6.00
NIN	\$9.00
EHT	\$18.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$6.00, \$9.00, \$18.00.

H. Mid-Tier Prize - A prize of \$27.00, \$54.00, \$81, \$100 or 300.

I. High-Tier Prize - A prize of \$900 or \$1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (679), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 679-0000001-001.

L. Pack - A pack of "TEXAS TRIPLER" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; tickets 005 to 009 on the next page etc.; and tickets 246 to 250 will be on the last page. Tickets 001 and 250 will be folded down to expose the pack-ticket number through the shrink-wrap. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS TRIPLER" Instant Game No. 679 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket.

A prize winner in the "TEXAS TRIPLER" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. Scratch the PLAY AREA. If a players reveals 2 (two) matching numbers, the player wins the prize shown in the PRIZE BOX. If a player reveals 3 (three) matching numbers, the player wins TRIPLE the prize shown in the PRIZE BOX. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 10 (ten) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Players can win only one (1) time on a ticket.

C. A winning ticket will not contain more than three (3) like play symbols.

D. On non-winning tickets, all play symbols will be unique.

E. Three matching play symbols will win 3 times the prize amount shown and will win as per the prize structure.

F. Two matching play symbols will win the prize amount shown.

G. The combination of play symbols "06, 06, 06" will never appear on any ticket

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS TRIPLER" Instant Game prize of \$1.00, \$2.00, \$3.00, \$6.00, \$9.00, \$18.00, \$27.00, \$54.00, \$81.00, \$100 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$27.00, \$54.00, \$81.00, \$100 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and

the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS TRIPLER" Instant Game prize of \$900 or \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS TRIPLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TEXAS TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "TEXAS TRIPLER" Instant Game, the

Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by

the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 679. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 679 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,320,000	9.09
\$2	480,000	25.00
\$3	480,000	25.00
\$6	144,000	83.33
\$9	72,000	166.67
\$18	24,000	500.00
\$27	7,500	1,600.00
\$54	7,500	1,600.00
\$81	4,000	3,000.00
\$100	1,250	9,600.00
\$300	1,500	8,000.00
\$900	14	857,142.86
\$1,000	14	857,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.72. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 679 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 679, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant

to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200602978
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 31, 2006

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Instant Game Number 683 "\$50,000 Riches"

1.0 Name and Style of Game.

A. The name of Instant Game No. 683 is "\$50,000 RICHES". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 683 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 683.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each

Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, \$100, \$500, \$5,000, \$50,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, GOLD BAR SYMBOL, SAFE SYMBOL or 5X SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 683 - 1.2D

PLAY SYMBOL	CAPTION
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTEEN
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUN
\$500	FIV HUN
\$5,000	FIV THOU
\$50,000	50 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
21	TNE
22	TTW
23	TTH
24	TFR
25	TFV
26	TSX
27	TSV
28	TEI
29	TNI
30	THY
GOLD BAR SYMBOL	2X
SAFE SYMBOL	WIN
5X	WINX5

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 683 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00 or \$15.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$5,000 or \$50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (683), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 683-0000001-001.

L. Pack - A pack of "\$50,000 RICHES" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$50,000 RICHES" Instant Game No. 683 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Proce-

dures, and the requirements set out on the back of each instant ticket. A prize winner in the "\$50,000 RICHES" Instant Game is determined once the latex on the ticket is scratched off to expose 46 (forty-six) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols the player wins the prize shown for that number. If a player reveals a "SAFE" play symbol, the player wins the prize shown instantly. If a player reveals a "GOLD BAR" play symbol, the player wins DOUBLE the prize shown. If a player reveals a "5X" play symbol, the player wins 5 TIMES the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 46 (forty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 46 (forty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 46 (forty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Players can win up to twenty (20) times in this play area.

C. No duplicate non-winning YOUR NUMBERS on a ticket.

D. Non-winning prize symbols will not match a winning prize symbol on a ticket.

E. Non-winning tickets will not contain more than three like prize amounts.

F. No duplicate WINNING NUMBERS will appear on a ticket.

G. The "SAFE" symbol will never appear as a "WINNING NUMBER".

H. The "GOLD BAR" symbol will never appear as a "WINNING NUMBER".

I. The "5X" symbol will never appear as a "WINNING NUMBER".

J. The "SAFE" symbol will automatically win the prize amount shown and will win as per the prize structure.

K. The "GOLD BAR" symbol will win DOUBLE the prize amount shown and will win as per the prize structure.

L. The "5X" symbol will win five (5) times the prize amount shown and will win as per the prize structure.

M. YOUR NUMBERS will never equal the corresponding Prize symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$50,000 RICHES" Instant Game prize of \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$50,000 RICHES" Instant Game prize of \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$50,000 RICHES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$50,000 RICHES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "\$50,000 RICHES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available

in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 683. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 683 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	503,200	8.11
\$10	435,200	9.38
\$15	122,400	33.33
\$25	51,000	80.00
\$50	37,400	109.09
\$100	12,852	317.46
\$500	952	4,285.71
\$5,000	12	340,000.00
\$50,000	4	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.51. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 683 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 683, the State Lottery Act (Texas Government Code,

Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200602979

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: May 31, 2006



Instant Game Number 684 "Icy Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 684 is "ICY CASH". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 684 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 684.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: POT OF GOLD SYMBOL, DIAMOND SYMBOL, HORSESHOE SYMBOL, CLOVER SYMBOL, STACK OF COINS SYMBOL, MONEY BAG SYMBOL, DOLLAR BILL SYMBOL, TREASURE CHEST SYMBOL, PIGGY BANK SYMBOL and SAFE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 684 - 1.2D

PLAY SYMBOL	CAPTION
POT OF GOLD SYMBOL	POT
DIAMOND SYMBOL	DMD
HORSESHOE SYMBOL	SHOE
CLOVER SYMBOL	CLVR
STACK OF COINS SYMBOL	COIN
MONEY BAG SYMBOL	BAG
DOLLAR BILL SYMBOL	BILL
TREASURE CHEST SYMBOL	CHST
PIGGY BANK SYMBOL	BANK
SAFE SYMBOL	SAFE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 684 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Se-

rial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (684), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 684-0000001-001.

L. Pack - A pack of "ICY CASH" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "ICY CASH" Instant Game No. 684 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "ICY CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 20 (twenty) Play Symbols. Scratch the play area and count up the number of moneybag symbols revealed and see prize legend for prize won. Only highest prize paid. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 20 (twenty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 20 (twenty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 (twenty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The moneybag play symbol will appear an approximately equal number of times in each of the 20 play spots and will only appear on intended winning tickets.

C. There will never be more than 10 moneybag play symbols on a ticket.

D. There will be no more than three like non-winning play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "ICY CASH" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery

Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ICY CASH" Instant Game prize of \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ICY CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "ICY CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "ICY CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 684. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 684 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	720,000	8.33
\$4	168,000	35.71
\$5	132,000	45.45
\$10	96,000	62.50
\$15	60,000	100.00
\$20	36,000	166.67
\$50	12,000	500.00
\$100	8,700	689.66
\$500	1,500	4,000.00
\$25,000	9	666,666.67

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.86. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 684 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 684, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200602981
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 31, 2006

Texas Board of Professional Engineers

Stakeholder Meeting Announcement

The Texas Board of Professional Engineers (Board) is given authority to issue advisory opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days.

Pursuant to that requirement, the Board hereby notifies potential stakeholders that it has initiated the process to develop an advisory opinion regarding commissioning building systems. There may be some overlap between engineering and commissioning agent's roles and responsibilities. The request asks for a determination of the aspects of

commissioning a building that would require the services of a licensed professional engineer. There are guidelines developed by the American Society of Heating, Refrigeration, and Air Conditioning Engineers that describe the commissioning process. In addition, the United States Green Building Council has developed a program called Leadership in Energy and Environmental Design that has guidance on commissioning of building energy systems. There is also an Association of Air Balance Council that describes the requirements of Commissioning Authorities and these authorities include, but are not limited to, professional engineers. Several of these organizations have guidelines specifying the requirements of the commissioning authority. The Board has developed a stakeholder process to gather information from professional engineers, consultants and other interested parties. The policy advisory will be written with consideration given to stakeholder comments. This notice is intended to generate a list of possible stakeholders and to initiate public comment. The policy advisory will be written with consideration given to stakeholder comments. This notice is intended to generate a list of possible stakeholders and to initiate public comment. The Board will hold a stakeholder meeting at 10 a.m. on June 23, 2006. Stakeholder contact information and comments received during the posting period will be considered in the policy advisory and the scheduling of the stakeholder meeting:

Texas Board of Professional Engineers

1917 IH 35 South

Austin, Texas 78741

Attention: Policy Advisory Staff

Or by e-mail to: peboard@tbpe.state.tx.us

TRD-200602963

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Filed: May 31, 2006

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Public Utility Commission of Texas

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on May 25, 2006, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §14.101 and §39.158 (Vernon 1998 & Supplement 2005) (PURA).

Docket Style and Number: Joint Application of LCRA Transmission Services Corporation and the City of Seguin to Transfer Certificate Rights and for Approval of Transfer of Facilities in Guadalupe County, Docket Number 32752.

The Application: The LCRA Transmission Services Corporation (LCRA TSC) and the City of Seguin (Seguin) filed a joint application for approval to transfer from Seguin to LCRA TSC a two-mile 138-kV transmission line and related substation assets located in Guadalupe County, Texas. The transmission line being transferred in this proceeding is the only transmission facility owned by Seguin. The transmission line connects Seguin's Cushman and Seguin Substations. LCRA TSC currently leases the transmission and substation assets and operates these in conjunction with its other transmission assets. LCRA TSC and Seguin executed an Asset Purchase Agreement for the approximately two-mile long transmission line that joins the two substations.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 32752.

TRD-200602948
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 30, 2006

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Notice of Application to Amend Certificated Service Area Boundaries in Goliad County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on May 26, 2006, for an amendment to certificated service area boundaries within Goliad County, Texas.

Docket Style and Number: Application of AEP Texas Central Company and Victoria Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for the Transfer of Certain Customers in Victoria Electric Cooperative, Inc.'s Service Area and Relinquishment of Service Area Exception within Goliad County. Docket Number 32759.

The Application: AEP Texas Central Company seeks to relinquish its certificated right and obligation to provide electric wires service to customers it currently serves in an area that is generally singly certificated to Victoria Electric Cooperative, Inc. southwest of the City of Victoria and northeast of the community of Fannin north of U.S. Highway 59. The service territory affected by this petition encompasses an area in which TCC currently provides service to approximately 15 existing customers in the Twin Oak Lakes Subdivision.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than June 19, 2006 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32759.

TRD-200602949
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 30, 2006

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Notice of Application to Amend Certificated Service Area Boundaries in Moore County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on May 23, 2006, for a service area exception to amend certificated service area boundaries within Moore County.

Docket Style and Number: Application of Southwestern Public Service Company (an Xcel Energy Company) for a Certificate of Convenience and Necessity for a Service Area Exception in Moore County. Docket Number 32742.

The Application: Southwestern Public Service Company (SPS) requests a service area boundary amendment to provide service to a specific customer located within the certificated service territory of Rita Blanca Electric Cooperative, Inc. (RBEC) for two irrigation wells. SPS is already providing service to this customer and can accommodate the additional facility without any substantial investment. RBEC is in full agreement with the territory amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than June 16, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32742.

TRD-200602919
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2006

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On May 22, 2006, KMC Network Services, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60418. Applicant intends to relinquish its certificate.

The Application: Application of KMC Network Services, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 32738.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-

782-8477 no later than June 14, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32738.

TRD-200602918
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 25, 2006

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San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposal

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms for the development of a Microsimulation Model for the Fort Sam Houston area.

A copy of the Request for Proposals (RFP) may be requested by calling Jeanne Geiger, Deputy Director, at (210) 227-8651 or by downloading the RFP and attachments from the MPO's website at www.sametroplan.org. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CDT), Friday, July 7, 2006 at the MPO office to:

Jeanne Geiger, Deputy Director
San Antonio-Bexar County MPO
1021 San Pedro, Suite 2200
San Antonio, Texas 78212

The contract award will be made by the MPO's Transportation Policy Board based on the recommendation of the project's Selection/Oversight Committee. The Selection/Oversight Committee will review the proposals based on the evaluation criteria listed in the RFP.

Funding for this project, in the amount of \$200,000, is contingent upon the availability of Federal transportation planning funds.

TRD-200602916
Jeanne Geiger
Deputy Director
San Antonio-Bexar County Metropolitan Planning Organization
Filed: May 25, 2006

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Request for Proposal

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms for the development of microsimulation models for three activity centers: the Broadway/New Braunfels Corridor, Brooks City-Base, and the South Texas Medical Center.

A copy of the Request for Proposals (RFP) may be requested by calling Jeanne Geiger, Deputy Director, at (210) 227-8651 or by downloading the RFP and attachments from the MPO's website at www.sametroplan.org. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CDT), Friday, July 7, 2006 at the MPO office to:

Jeanne Geiger, Deputy Director
San Antonio-Bexar County MPO
1021 San Pedro, Suite 2200
San Antonio, Texas 78212

The contract award will be made by the MPO's Transportation Policy Board based on the recommendation of the project's Selection/Oversight Committee. The Selection/Oversight committee will review the proposals based on the evaluation criteria listed in the RFP.

Funding for this project, in the amount of \$550,000, is contingent upon the availability of Federal transportation planning funds.

TRD-200602917
Jeanne Geiger
Deputy Director
San Antonio-Bexar County Metropolitan Planning Organization
Filed: May 25, 2006

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Lancaster, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Lancaster, Lancaster Airport. TxDOT CSJ No.:0618LNCAS. Scope: Provide engineering/design services to install supplemental lighted windcone, signage and security fencing, extend MIRL to runway 31 end, relocate PAPI-4 and REIL to runway 31 end, overlay apron and taxiways, overlay and mark runway 13-31, extend runway 13-31, extend parallel taxiway to runway 31 end, construct holding apron at the end of runway 31, realign Ferris Road, construct apron and T-hangar taxiway, construct corporate hangar access taxiways, and construct storm water detention facilities.

The DBE goal is set at 5%. TxDOT Project Manager is Alan Schmidt, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Lancaster Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Please note:

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 E. Riverside Drive, 5th Floor,

South Tower, Austin, Texas 78704 no later than **Thursday, July 6, 2006, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Alan Schmidt, PE, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200602929

Joanne Wright

General Counsel

Texas Department of Transportation

Filed: May 26, 2006



Aviation Division - Request for Proposal for Professional Services

The City of Lancaster, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Lancaster, Lancaster Airport. TxDOT CSJ No: 06EALNCAS. Scope: Prepare an Environmental Assessment in accordance with current TxDOT and FAA guidance and obtain required permits at the Lancaster Airport.

The proposed actions to be evaluated include: extend runway 13-31; extend parallel taxiway to runway 31 end; overlay runway, taxiways and apron; construct apron, corporate hangar access taxiways and T-hangar taxiway; construct holding apron at the end of runway 31; realign Ferris Road; relocate PAPI-4 and REIL to runway 31 end; extend MIRL to runway 31 end; install supplemental lighted windcone; install signage; install security fencing; and construct storm water detention facilities.

The DBE goal is set at 0%. TxDOT Project Manager is Josephine Jarrell.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn551.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

Please note:

Six completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **Thursday, July 6, 2006, at 4:00 p.m.** Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The Consultant Selection Committee (Committee) will be composed of local government members. The final selection by the Committee will generally be made following the completion of review of proposals. The Committee will review all proposals and rate and rank each. The criteria for evaluating consultants for airport planning projects can be found at <http://www.dot.state.tx.us/business/avnconsultinfo.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The Committee does, however, reserve the right to conduct interviews for the top rated firms if the Committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Josephine Jarrell, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200602946

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: May 30, 2006



Public Notice of DEIS

Pursuant to Title 43, Texas Administrative Code, §2.43(c)(9)(A), the Texas Department of Transportation (TxDOT) announces to the public the availability of the Revised Draft Environmental Impact Statement (Revised DEIS), dated May 2006, for the proposed construction of Segment F-2 of Grand Parkway (State Highway 99) northwest of Houston in Harris County, Texas. Comments regarding the Revised DEIS can be mailed to the Grand Parkway Association, Attention: Segment F-2 Comments, 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or to TxDOT Houston District, Attention: Director of Project Development, P. O. Box 1386, Houston, Texas 77251-1386. Comments will be accepted by e-mail to segmentf2comments@grandpky.com. All comments must be submitted prior to 5:00 p.m. on September 7, 2006.

The Revised DEIS was prepared in response to comments received regarding the Segment F-2 DEIS that was released in February 2004. The Grand Parkway Association, in coordination with TxDOT and the Federal Highway Administration (FHWA), has prepared the Revised DEIS to include updated land use, updated indirect and cumulative impacts, and additional alternatives developed in response to land use constraints.

Transportation improvements are needed in the Segment F-2 study area because there are inefficient connections between suburban communities and major radial roadways, the current and future transportation demand exceeds capacity, many roadways in the study area have a high accident rate, and there is an increasing strain on transportation infrastructure from population and economic growth. The purpose of the proposed transportation improvements in the Segment F-2 study area

is to efficiently link the suburban communities and major roadways, enhance mobility and safety, and respond to economic growth. The goal is to improve system linkage, address current and future transportation demand, improve safety, and accommodate population and economic growth.

The study process included consideration of a full range of alternatives. The Study Team considered the No-Build Alternative, various transportation modes, alternative corridors, and various Build alternative alignments. Transportation System Management, Travel Demand Management, Smart Street improvements, and modal transportation improvements such as bus transit, high-occupancy vehicle lanes, rail feasibility, and new planned roadway construction were considered. Alternatives determined not to meet the need for and purpose of the project were eliminated from further consideration, while other reasonable alternatives were identified and carried forward for detailed study. The Build Alternative was selected because it is the only alternative that fulfills the need for and purpose of the project. The study approach first emphasized avoidance, and then minimization to ensure that the identified Preferred Alternative Corridor, and ultimately the Recommended Alternative Alignment, minimized adverse impacts to the greatest extent possible. Identification of a Recommended Alternative Alignment was performed after careful consideration of comments received from the public and resource agencies.

The Recommended Alternative Alignment consists of a controlled access toll road on a new location. The proposed facility would include four main lanes and intermittent frontage roads within a right-of-way width of 400 feet. A total of six Alternative Alignments (A through F), in addition to the No-Build Alternative, are presented in the Revised DEIS. All alternative alignments extend from SH 249 to IH 45 in an east-west direction and are described below.

A. Alternative Alignment A begins at SH 249 and passes through the center of the study area. This alignment alternative ends at IH 45, approximately 0.6 miles north of Spring Stuebner Road and is 12.5 miles in length.

B. Alternative Alignment B starts at the same location as Alternative Alignment A but passes through the middle and southern portion of the study area. Alternative Alignment B ends 0.1 miles south of the Hardy Toll Road and IH 45 intersection and is 13.0 miles in length.

C. Alternative Alignment C begins at the same location as Alignments A and B and passes through the north and middle portion of the study area. Alternative Alignment C ends at the same location of Alternative Alignment A and is 12.2 miles in length.

D. Alternative Alignment D begins at the same location as Alignments A through C and is 12.0 miles in length. Alternative Alignment D passes through the middle of the study area from Boudreaux Road approximately 0.3 miles northeast of FM 2920 for approximately 7.0 miles before ending at the same location as Alternative Alignment C.

E. Alternative Alignment E begins at the same location as Alternative Alignments A through D and is 12.5 miles in length. Alternative Alignment E passes through the northern portion of the study area where it ends at the same location as Alternative Alignment B.

F. Alternative Alignment F begins at the same location as Alternative Alignments A through E and is 12.1 miles in length. Alternative Alignment F passes through the northern portion of the study area before ending at the same location as Alternative Alignment C.

The Recommended Alternative Alignment that has emerged from the study is a combination of alternative alignments. The Recommended Alternative Alignment allowed impact avoidance and minimization for a number of resources, fulfilled the need for and purpose of the project, and provided feasible engineering alternatives. The Recommended Al-

ternative Alignment best balances the expected project benefits with the overall effects.

The Recommended Alternative Alignment for Segment F-2 would require the acquisition of right-of-way, the adjustment of utility lines, and the filling of aquatic resources including approximately 1.3 acres of potentially jurisdictional wetlands. The displacement of four businesses, 57 existing residences, and 66 platted residences would occur. Access changes or right-of-way would be acquired from one undeveloped school property (Klein ISD), one church, and one private park (Spring Klein Baseball Park). Additionally, like all alignments considered, the Recommended Alternative Alignment would affect visual resources in the immediate area, present potential access impacts, cause separation of farmland from homesteads, cause changes to community cohesion, and affect 2.3 acres of remnant prairie topography. No effects to archeological sites, historic properties, cemeteries, publicly-owned parks, riparian and bottomland hardwood forests, or endangered species are expected. No disproportionate effects to minority or low-income populations would result from this alternative. Although a Recommended Alternative Alignment is presented, selection of the final Preferred Alternative Alignment will not be made until after the public comment period is completed, comments on the Revised DEIS are received and considered, and the environmental effects are fully evaluated.

The Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act) requires that comparable, decent, safe, and sanitary replacement housing within a person's financial means be made available to all affected residents. The State's Relocation Assistance Program will be available to all individuals, families, businesses, farmers, ranchers, and nonprofit organizations displaced as a result of the proposed project. Acquisitions of businesses and residences will be conducted in accordance with the Uniform Act, as amended in 1987. Relocation assistance would be made available to all businesses and residences without discrimination, consistent with the requirements of the Civil Rights Act of 1964 and the Housing and Urban Development Amendment of 1974. Representatives from the state will be available at the public hearing to answer questions and provide information concerning the property acquisition process and benefits offered by relocation assistance. The property acquisition process for this project is scheduled to begin in 2008. Construction could begin as early as 2009, depending upon the completion of property acquisition and the availability of funds.

Copies of the Revised DEIS and other information about the project may be obtained by contacting Mr. David Gornet at the Grand Parkway Association, at (713) 965-0871. Paper copies of the Revised DEIS may also be reviewed at the following locations: Grand Parkway Association, 4544 Post Oak Place, Suite 222, Houston, TX; TxDOT Houston District Office, 7721 Washington Avenue, Houston, TX; Houston Public Library Bibliographic Information Center, 500 McKinney, Houston, TX; Harris County Public Library, Barbara Bush Branch, 6817 Cypresswood Dr., Spring, TX; Harris County Public Library, Tomball Branch, 1226 W. Main St., Tomball TX; and Montgomery County Library, South Branch, 2101 Lake Robbins Dr., The Woodlands, TX. A digital version of the Revised DEIS may be downloaded from the Grand Parkway website at www.grandpky.com.

TRD-200602945

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: May 30, 2006

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Texas Water Development Board

Notice of Public Hearing

An attorney with the Texas Water Development Board will conduct a public hearing beginning at 9:00 a.m., July 10, 2006, Room 1-111, William Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on the proposed Fiscal Year 2007 Intended Use Plan for the Drinking Water State Revolving Fund (DWSRF).

The Intended Use Plan contains a combined list of projects for large and small communities, including projects for privately owned water systems and projects for entities which have qualified as disadvantaged communities. Projects are listed in priority order. The Intended Use Plan describes the sources and uses of funds for projects as well as set-aside activities. The proposed Intended Use Plan has been prepared pursuant to rules for the DWSRF as adopted by the Texas Water Development Board in 31 Texas Administrative Code, Chapter 371.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed Intended Use Plan. In addition, persons may participate in the hearing by mailing written comments before July 10, 2006 to Bruce E. Crawford, Office of Project Finance and Construction Assistance, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711. Written comments will also be accepted for thirty (30) days following the July 10, 2006 hearing. Copies of the proposed 2007 Intended Use Plan will be available in Room 580 of the Stephen F. Austin Building or may be obtained from the Office of Project Finance and Construction Assistance, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711.

The hearing is being conducted pursuant to 31 Texas Administrative Code, §371.11 and 40 Code of Federal Regulations Part 25.

TRD-200602975
Jonathan Steinberg
Deputy Counsel
Texas Water Development Board
Filed: May 31, 2006

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Notice of Public Hearing

An attorney with the Texas Water Development Board will conduct a public hearing beginning at 9:00 a.m., July 24, 2006, Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78711, on the proposed Fiscal Year 2007 Intended Use Plan for the Clean Water State Revolving Fund (CWSRF).

The Intended Use Plan contains a listing of treatment works projects in prioritized order which will be considered for funding in FY 2007 through the CWSRF program. The proposed Intended Use Plan has been prepared pursuant to rules for the CWSRF as adopted by the Texas Water Development Board in 31 Texas Administrative Code, Chapter 375.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed Intended Use Plan. In addition, persons may participate in the hearing by mailing written comments before August 15, 2006 to Bruce E. Crawford, Office of Project Finance and Construction Assistance, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711. Copies of the proposed 2007 Intended Use Plan will be available in Room 580 of the Stephen F. Austin Building or may be obtained from the Office of Project Finance and Construction Assistance, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711.

This hearing is being conducted pursuant to 31 Texas Administrative Code, §375.11 and 40 Code of Federal Regulations Part 25.

TRD-200602976
Jonathan Steinberg
Deputy Counsel
Texas Water Development Board
Filed: May 31, 2006

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).